

EXHIBIT D

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TDY Holdings v. United States of America

Tommy Jordan

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

TDY HOLDINGS, LLC, and	§
TDY INDUSTRIES, INC.	§
	§
Plaintiffs,	§
	§
VS.	§ Case No. 07cv0787 JAH
	§
UNITED STATES OF AMERICA,	§
UNITED STATES DEPARTMENT	§
OF DEFENSE, and ROBERT M.	§
GATES, in his official	§
capacity as SECRETARY OF	§
DEFENSE	§
	§
Defendants.	§

Videotaped Deposition of
TOMMY B. JORDAN
San Antonio, Texas
Monday, October 10, 2011
12:53 p.m.

Reported by: Micheal A. Johnson, CRR

DIGITAL EVIDENCE GROUP
1299 Pennsylvania Ave, NW, Suite 1130E
Washington, DC 20004
(202) 232-0646

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4	Held at the offices of:	4	
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1	DEPOSITION EXHIBITS	1	PROCEEDINGS
2	TOMMY B. JORDAN	2	THE VIDEOGRAPHER: This is the start
3	October 10, 2011	3	of the deposition of Tommy B. Jordan. Today is
4	NUMBER DESCRIPTION MARKED	4	Monday, October 10, 2011. Time on record now is
5	Exhibit 73 5/12/1994 Memorandum, Defense 150	5	12:53.
6	Contract Audit Agency to Regional	6	Will counsel please voice identify
7	Directors, DCAA; Director, Field	7	yourselves for the record, please.
8	Detachment, DCAA	8	MR. BARR: Lewis Barr, United States
9	Bates TDYRYAN50002509 -	9	Department of Justice.
10	TDYRYAN50002521	10	MR. WINE: Brad Wine for TDY
11	Exhibit 74 Armed Services Procurement 155	11	Industries and TDY Holdings.
12	Regulation Excerpt, Revised 2	12	MR. MATEER: Mike Mateer for TDY
13	November 1959	13	Industries and TDY Holdings.
14	Bates US0250474 - US0250479	14	MR. WINE: And with us as well is
15	Exhibit 75 Armed Services Procurement 155	15	Lauren McAndrews with ATI, also with TDY Holdings
16	Regulation Excerpt, 1 July 1960	16	and TDY Industries, and Robert Zoch.
17	Bates US0250480 - US0250487	17	THE VIDEOGRAPHER: Please swear in
18	Exhibit 76 Armed Services Procurement 155	18	the witness.
19	Regulation Excerpt, 1 March 1963	19	TOMMY B. JORDAN
20	Bates US0250490 - US0250513	20	having been first duly sworn, testified as follows:
21	Exhibit 77 Armed Services Procurement 155	21	
22	Regulation Excerpt, 30 April	22	
	1971, Rev. 9		
	Bates US0250514 - US0250528		
	Exhibit 78 Armed Services Procurement 155		
	Regulation Excerpt, 16 April 1973		
	Bates US0250529 - US0250536		
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	Exhibit 80 Armed Services Procurement 155		
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	Bates US0250555 - US0250564		
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1	DEPOSITION EXHIBITS	1	EXAMINATION
2	TOMMY B. JORDAN	2	BY MR. BARR:
3	October 10, 2011	3	Q. Good afternoon, Mr. Jordan. Would you
4	NUMBER DESCRIPTION MARKED	4	state your full name and address for the record,
5	Exhibit 81 Federal Acquisition Regulation 155	5	please.
6	Excerpt, Effective Date: April 1,	6	A. Tommy Barton, B-a-r-t-o-n, Jordan;
7	1984	7	address is 2351 Lakewood, Seguin, Texas, 78155.
8	Bates US0250568 - US0250574	8	Q. We are here today and the next -- other
9	Exhibit 82 Federal Acquisition Regulation 155	9	days this week and next, pursuant to an order of the
10	Excerpt, Effective Date: April 1,	10	court. I would like to mark that as Exhibit 1 in
11	1984	11	this case.
12	Bates US0250579 - US0250585	12	(Deposition Exhibit 1 marked.)
13	Exhibit 83 Federal Acquisition Regulation 156	13	BY MR. BARR:
14	Excerpt, 1990 Edition	14	Q. And the notice of deposition will be
15	Bates US0250586 - US0250592	15	Exhibit 2.
16		16	(Deposition Exhibit 2 marked.)
17		17	BY MR. BARR:
18		18	Q. Mr. Jordan, I don't have any questions
19		19	for you on those documents. That's just a formality
20		20	for the record.
21		21	Let's start by talking about your
22		22	personal background and qualifications. You are --
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<p>1 have been designated as an expert witness in this</p> <p>2 case by the United States government. Could you</p> <p>3 briefly describe your education.</p> <p>4 A. I graduated from high school in 1956.</p> <p>5 Enrolled at Southwestern University in Georgetown,</p> <p>6 Texas. I graduated from Southwestern in 1961 with a</p> <p>7 bachelor of science degree in chemistry with a minor</p> <p>8 in psychology and concurrently received a bachelor</p> <p>9 of arts in economics with a minor in history.</p> <p>10 Q. And did you then seek employment?</p> <p>11 A. I spent nine months working for my</p> <p>12 father on a ranch while I looked for employment. I</p> <p>13 found a job with the United States government at</p> <p>14 Kelly Air Force base and started my federal career</p> <p>15 in March of 1962.</p> <p>16 Q. And what was your first position there?</p> <p>17 A. My first position was a GS-1102 trainee,</p> <p>18 and we called it in those days a buyer. And then I</p> <p>19 progressed from there up the ladder, if you will.</p> <p>20 Q. How long were you a trainee?</p> <p>21 A. Approximately a year. I was promoted</p> <p>22 from a GS-7 to a GS-9 I think it was in April of</p> <p style="text-align: right;">Page 18</p>	<p>1 a very intensive basic contracting course.</p> <p>2 Q. Now, was this course taught by lawyers</p> <p>3 or nonlawyers?</p> <p>4 A. Best of my recollection, it was not</p> <p>5 taught by lawyers. It was nonlawyers, but it was</p> <p>6 people that had been actively engaged in contracting</p> <p>7 for all of their careers.</p> <p>8 Q. Now, are you familiar with the term</p> <p>9 contracting officer warrant?</p> <p>10 A. Yes, I am.</p> <p>11 Q. Did you receive one?</p> <p>12 A. I received my contracting officer's</p> <p>13 warrant in December of 1964.</p> <p>14 Q. And how long did you hold that warrant?</p> <p>15 A. I held the warrant continuously until</p> <p>16 October of 1990 when I was moved out of the</p> <p>17 contracting organization into a -- what we call a</p> <p>18 supply chain management organization.</p> <p>19 Q. Now, in order to receive your</p> <p>20 contracting officer warrant, was someone's approval</p> <p>21 necessary in particular?</p> <p>22 A. It had to be approved by I believe it</p> <p style="text-align: right;">Page 20</p>
<p>1 1963. So I was in a trainee status for about 12,</p> <p>2 13 months.</p> <p>3 Q. And could you describe for the court the</p> <p>4 training that you received?</p> <p>5 A. It was a combination of formal training</p> <p>6 plus hands-on handling of various contractual</p> <p>7 documents and actions under the tutelage of an</p> <p>8 experienced contracting officer.</p> <p>9 Q. Was this experienced contracting officer</p> <p>10 your supervisor?</p> <p>11 A. He was not my formal supervisor. He was</p> <p>12 the GS-12 contracting officer, but he was not a</p> <p>13 formal supervisor.</p> <p>14 Q. And the -- aside from working under the</p> <p>15 tutelage of this contracting officer, you said you</p> <p>16 received training. What kind of training did you</p> <p>17 receive?</p> <p>18 A. I received -- I went to various courses.</p> <p>19 The one that I recall off the top of my head was a</p> <p>20 basic contracting course at Ft. Lee, Virginia, that</p> <p>21 was conducted by the army. And I don't remember now</p> <p>22 whether it was three weeks or four weeks, but it was</p> <p style="text-align: right;">Page 19</p>	<p>1 was the installation commander and it had to be</p> <p>2 certified by my immediate supervisory chain that I</p> <p>3 had received not only the necessary training but had</p> <p>4 demonstrated prerequisite judgment, integrity and</p> <p>5 all of the other prerequisites that were required of</p> <p>6 contracting officers.</p> <p>7 Q. By the way, was the major general an</p> <p>8 attorney?</p> <p>9 A. No.</p> <p>10 Q. Now, between the time you were a trainee</p> <p>11 and when you received your contracting warrant, did</p> <p>12 you take additional courses?</p> <p>13 A. Yes. I went to various contracting</p> <p>14 courses throughout the entire 30 years that I was</p> <p>15 in -- actually hands-on contracting.</p> <p>16 Q. Can you give the court an idea of the</p> <p>17 topics that were covered in these courses that you</p> <p>18 took?</p> <p>19 A. It was -- it covered the regulatory</p> <p>20 foundation of contracting regulations, such as the</p> <p>21 ASPR and the regulations that we use specifically</p> <p>22 for the Air Force called AFPIs. Our own --</p> <p style="text-align: right;">Page 21</p>

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<p>1 Q. Could you explain what AFPI stands for.</p> <p>2 A. Air Force procurement instruction. Our</p> <p>3 own internal regulations that implemented those</p> <p>4 higher levels of regulation, the practices and</p> <p>5 procedures, customs for such things as negotiation,</p> <p>6 cost and pricing data, solicitation, preparation for</p> <p>7 negotiations, the requirements pertaining to</p> <p>8 preparation of contractual documents, and then what</p> <p>9 a procuring contracting officer did relative to the</p> <p>10 administration of those contracts once awarded.</p> <p>11 Q. When you mention solicitations, does</p> <p>12 that include things like request for proposals?</p> <p>13 A. Yes. There are request for proposal on</p> <p>14 negotiated procurements, and then there was another</p> <p>15 form of procurements called advertised procurements</p> <p>16 and those were invitation for bids.</p> <p>17 Q. Did the courses that you took include</p> <p>18 coverage of the use of specifications?</p> <p>19 MR. WINE: Objection, leading.</p> <p>20 A. Yes, it did.</p> <p>21 BY MR. BARR:</p> <p>22 Q. In what way?</p> <p style="text-align: right;">Page 22</p>	<p>1 source selection authority on those procurements.</p> <p>2 Q. Now, in government contracting parlance,</p> <p>3 what does "source selection" mean?</p> <p>4 A. Source selection is a process that we</p> <p>5 used where you evaluated things other than price and</p> <p>6 the contractor's response to the solicitation</p> <p>7 relative to delivery. We had a detail evaluation of</p> <p>8 the technical response of the contractor to meet the</p> <p>9 requirements of the Air Force, a detail analysis of</p> <p>10 the cost data that had been submitted by the</p> <p>11 contractor in response to the solicitation, and then</p> <p>12 the source selection authority took the</p> <p>13 recommendations of the source selection board and</p> <p>14 made a decision as to that contractor whose proposal</p> <p>15 was most advantageous to the government, price and</p> <p>16 other factors considered.</p> <p>17 Q. Okay. Now, as a warranted contracting</p> <p>18 officer, did you have a particular title?</p> <p>19 A. Contracting officer and, more</p> <p>20 specifically, it was a procuring contracting</p> <p>21 officer, a PCO.</p> <p>22 Q. Now, in the 1960s did your grade as an</p> <p style="text-align: right;">Page 24</p>
<p>1 A. The application of specifications to</p> <p>2 solicitation documents and how those specifications</p> <p>3 were incorporated into documents, such as purchase</p> <p>4 descriptions and request for proposals for --</p> <p>5 contractors submit technical proposals in response</p> <p>6 to the solicitation.</p> <p>7 Q. Are you familiar with the term "source</p> <p>8 selection"?</p> <p>9 A. Yes, I am.</p> <p>10 Q. Did you take courses in that issue -- on</p> <p>11 those issues?</p> <p>12 A. I took courses in selection -- in source</p> <p>13 selection. I served on several source selection</p> <p>14 boards and then when I was the director of</p> <p>15 contracting, I was actually the source selection</p> <p>16 authority on several procurements. And then during</p> <p>17 the closure process from 1995 through 2001, we had a</p> <p>18 couple of major source selections for depot level</p> <p>19 maintenance that we had accomplished at Kelly Air</p> <p>20 Force Base and I served in the capacity of special</p> <p>21 advisor to the deputy assistant secretary of the Air</p> <p>22 Force who was the senior acquisition executive and</p> <p style="text-align: right;">Page 23</p>	<p>1 employee of the federal government -- did that</p> <p>2 change over time?</p> <p>3 A. As I indicated, I was promoted to GS-9</p> <p>4 in I believe it was April of 1964. I was promoted</p> <p>5 to GS-12 in I believe it was October of 1965. I was</p> <p>6 promoted to GS-13 nonsupervisory contract negotiator</p> <p>7 I believe it was in February of 1968. Then in</p> <p>8 January of 1970 I became a supervisory GS-13</p> <p>9 contract negotiator. I was promoted to the rank of</p> <p>10 GS -- GM-14, pardon me, general manager 14, in</p> <p>11 October of 1972.</p> <p>12 Q. Let me stop you there. Just want to</p> <p>13 focus on -- before we get too far ahead -- as in</p> <p>14 your capacity as a warranted contracting officer</p> <p>15 over the course of your time as such, did you visit</p> <p>16 manufacturing plants to address contract-related</p> <p>17 issues?</p> <p>18 A. Yes, I did.</p> <p>19 Q. And in the course of those visits, what</p> <p>20 did you do while you were there?</p> <p>21 A. Well, the first contractor that I</p> <p>22 specifically recall visiting was General Dynamics in</p> <p style="text-align: right;">Page 25</p>

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<p>1 Fort Worth. I was the contracting officer on a</p> <p>2 major maintenance and modification program for the</p> <p>3 B-58, which was a supersonic bomber that the Air</p> <p>4 Force used. I made a number of visits to the</p> <p>5 contractor's facility to participate in technical</p> <p>6 reviews of the contractor's progress towards</p> <p>7 designing the modification that was intended to</p> <p>8 correct some inherent performance deficiencies that</p> <p>9 had been experienced in that aircraft.</p> <p>10 I recall another contractor that we</p> <p>11 had for -- that performed the depot level</p> <p>12 maintenance of an aircraft called a T-38 -- a T-29,</p> <p>13 T-38 that was down in Brownsville, Texas. They did</p> <p>14 maintenance on those aircrafts.</p> <p>15 Q. Was there also -- did you have an</p> <p>16 opportunity to visit McDonnell Douglas in</p> <p>17 California?</p> <p>18 A. Yes, I was --</p> <p>19 MR. WINE: Objection, leading.</p> <p>20 A. I was the contracting officer for a C-9A</p> <p>21 medivac -- pardon me, medical evacuation</p> <p>22 aircraft, and I was responsible for the logistics</p> <p style="text-align: right;">Page 26</p>	<p>1 these defense contractors, did you examine or pay</p> <p>2 any attention to chemical waste disposal issues?</p> <p>3 MR. WINE: Objection, vague.</p> <p>4 A. I saw nothing at any of those plants</p> <p>5 relative to any government involvement in chemical</p> <p>6 waste disposal.</p> <p>7 BY MR. BARR:</p> <p>8 Q. Now, in terms of your career</p> <p>9 advancement, if you could just briefly tick off the</p> <p>10 positions you held and when you held them between</p> <p>11 1972 and 1990, we can just sort of expedite that.</p> <p>12 A. In 1985 I was promoted to the level of</p> <p>13 general manager --</p> <p>14 Q. I'm sorry to interrupt. Let's start</p> <p>15 with 1972 and go forward.</p> <p>16 A. Okay. In 1972 I was promoted to GM-14</p> <p>17 supervisory contract negotiator and I was a branch</p> <p>18 chief. I had responsibility for three separate</p> <p>19 sections, each one headed up by a GM-13.</p> <p>20 Q. Which branch was that?</p> <p>21 A. That was the reciprocating engine</p> <p>22 branch.</p> <p style="text-align: right;">Page 28</p>
<p>1 support for that contract. And once the source</p> <p>2 selection had been completed, where the Air Force</p> <p>3 selected McDonnell Douglas to satisfy that</p> <p>4 requirement, I made a number of visits to the</p> <p>5 McDonnell Douglas plant out in Long Beach. And I</p> <p>6 specifically recall attending a two- or three-week</p> <p>7 course in factory maintenance of that specific</p> <p>8 aircraft. But all those visits to McDonnell Douglas</p> <p>9 were related to the performance of the contractor on</p> <p>10 technical issues.</p> <p>11 BY MR. BARR:</p> <p>12 Q. Now, the visits to the General Dynamics</p> <p>13 in Fort Worth, to McDonnell Douglas, did you observe</p> <p>14 any manufacturing activities?</p> <p>15 A. I observed manufacturing activities at</p> <p>16 all of the plants that I went to -- I visited, and</p> <p>17 then I observed the actual performance of government</p> <p>18 employees at those plants and actually met with</p> <p>19 them, employees such as administrative contracting</p> <p>20 officers, inspectors and defense contract audit</p> <p>21 agency auditors.</p> <p>22 Q. During any of your visits to any of</p> <p style="text-align: right;">Page 27</p>	<p>1 Q. And then what position did you take</p> <p>2 after 1972?</p> <p>3 A. In 1976 I was moved laterally to the</p> <p>4 position of chief of the jet engine branch. And</p> <p>5 then in I believe it was 1982 I was again moved</p> <p>6 laterally to the position of chief of the aerospace</p> <p>7 equipment branch. And then I believe it was in</p> <p>8 either late '83 or early '84 I assumed the position</p> <p>9 of GM-14, chief of the contracts committee, and that</p> <p>10 was a small group of individuals, all of them, with</p> <p>11 the exception of me, were GM-13s, and we reviewed</p> <p>12 and approved all documents that required review at a</p> <p>13 higher level, either at the director of contracting</p> <p>14 level or those documents that had to be forwarded to</p> <p>15 either the installation commander and/or</p> <p>16 headquarters, Air Force logistics command for</p> <p>17 approval.</p> <p>18 Q. Can you give us an example of what kind</p> <p>19 of documents would require such review?</p> <p>20 A. Based primarily upon the dollar value.</p> <p>21 We had limited authority at the installation level</p> <p>22 to manually approve contracts, and I don't remember</p> <p style="text-align: right;">Page 29</p>

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<p>1 the dollar value; but, for example, the contracts in</p> <p>2 excess of \$1 million had to be approved at the</p> <p>3 headquarters Air Force logistics command level.</p> <p>4 Q. Okay.</p> <p>5 A. And before those documents left the</p> <p>6 installation, we had to review all of those</p> <p>7 documents in the contracts committee.</p> <p>8 Q. Okay. Now, I think we left off at 1984.</p> <p>9 What was the next position that you took?</p> <p>10 A. Next position I was promoted to GM-15</p> <p>11 and assumed the position of the deputy chief of the</p> <p>12 commodities division. We had three branches within</p> <p>13 that division, each one headed up by a GM-14. The</p> <p>14 chief of the division was a full Air Force colonel.</p> <p>15 I was his deputy. And I continued to serve in that</p> <p>16 position until October of 1990.</p> <p>17 Q. What kind of -- what were your primary</p> <p>18 responsibilities as the deputy chief of the</p> <p>19 commodities division?</p> <p>20 A. To provide the -- advice and counsel to</p> <p>21 the organization relative to contracting issues. I</p> <p>22 reviewed and approved a lot of correspondence that</p> <p style="text-align: right;">Page 30</p>	<p>1 the next position you held?</p> <p>2 A. Then in 1990 we had a major</p> <p>3 reorganization within the Air Force. The Air Force</p> <p>4 made a decision to consolidate the Air Force systems</p> <p>5 command and the Air Force logistics command into the</p> <p>6 Air Force material command. And then when that</p> <p>7 organization was implemented, we had a subsequent</p> <p>8 reorganization of how we were aligned within the air</p> <p>9 logistics center and we became an air material area.</p> <p>10 And the commander, who was a major general, selected</p> <p>11 me to be the deputy chief of a directorate within</p> <p>12 that organization. And within that directorate, the</p> <p>13 chief was a full Air Force colonel. I was his</p> <p>14 deputy. We had --</p> <p>15 Q. Let me stop you there. When you say</p> <p>16 that "we became an air material area," what is the</p> <p>17 "we"?</p> <p>18 A. San Antonio air logistics center became</p> <p>19 the San Antonio air material area.</p> <p>20 Q. And when you say "San Antonio air</p> <p>21 logistics center," was that Kelly Air Force Base or</p> <p>22 something else?</p> <p style="text-align: right;">Page 32</p>
<p>1 was generated by subordinates relative to</p> <p>2 contracting issues. I reviewed every contract</p> <p>3 document that was required to be approved at a</p> <p>4 higher level. I was responsible for all of the</p> <p>5 personnel issues that were within that division</p> <p>6 relative to recommendations concerning promotions,</p> <p>7 discipline, et cetera.</p> <p>8 Q. Would it be accurate for the court to</p> <p>9 understand that you consulted with and advised those</p> <p>10 who were actually negotiating contracts?</p> <p>11 MR. WINE: Objection, leading.</p> <p>12 A. Yes. We had a process for all</p> <p>13 procurements where we had to prepare a procurement</p> <p>14 plan, if you will, for all major procurements.</p> <p>15 Those procurement plans had to be approved at a</p> <p>16 higher level above the contracting officer and I</p> <p>17 participated in the review of those procurement</p> <p>18 plans and, where appropriate, I directed that they</p> <p>19 be changed to reflect changes in the processes that</p> <p>20 I felt were necessary.</p> <p>21 BY MR. BARR:</p> <p>22 Q. After your promotion in 1985, what was</p> <p style="text-align: right;">Page 31</p>	<p>1 A. Kelly Air Force Base consisted of the</p> <p>2 air logistics center, air material area if you will,</p> <p>3 and we also had tenants at Kelly Air Force Base such</p> <p>4 as the 433rd troop carrier wing, which was an Air</p> <p>5 Force reserve squadron that flew C-5s. We had the</p> <p>6 air intelligence agency that handled all of the</p> <p>7 intelligence work for the Air Force, and then we had</p> <p>8 a Texas Air National Guard unit assigned to Kelly</p> <p>9 Air Force Base. So it was not -- it was more than</p> <p>10 just the air -- Kelly Air Force Base consisted of</p> <p>11 more than just the air logistics center or</p> <p>12 subsequently the air material area.</p> <p>13 Q. Now, when -- in terms of the air</p> <p>14 material area itself, can you give an approximation</p> <p>15 as to the size or acreage of the air material area</p> <p>16 itself within Kelly?</p> <p>17 MR. WINE: Objection, relevance.</p> <p>18 A. We have approximately 12,000 employees</p> <p>19 within the air material area, and I believe there</p> <p>20 was between 18 and 19,000 employees on Kelly Air</p> <p>21 Force Base. I don't remember the acreage.</p> <p>22 BY MR. BARR:</p> <p style="text-align: right;">Page 33</p>

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<p>1 Q. And what happened after -- in your -- in</p> <p>2 terms of your career, what happened after 1990?</p> <p>3 A. Then in 1994 I competed for and was</p> <p>4 selected for the position of director of contracting</p> <p>5 and was promoted from GM-15 to a member of the</p> <p>6 senior executive service within the Air Force.</p> <p>7 Q. Did that promotion require anyone in</p> <p>8 particular's approval?</p> <p>9 A. It required approval by the secretary of</p> <p>10 the Air Force. I had to interview before a panel</p> <p>11 consisting primarily of -- I believe there was</p> <p>12 either two or three major generals that conducted</p> <p>13 the interviews, and there may have been one senior</p> <p>14 executive service member. And then the</p> <p>15 recommendations of that panel, if you will, went to</p> <p>16 the secretary of the Air Force for approval.</p> <p>17 Q. In that position where in the hierarchy,</p> <p>18 if you will, of Air Force contracting did you stand?</p> <p>19 MR. WINE: Objection, vague.</p> <p>20 A. Best of my recollection, there were ten</p> <p>21 senior executive service members that were within</p> <p>22 the GS-1102 series -- contracting series. There was</p> <p style="text-align: right;">Page 34</p>	<p>1 probably more intense when I was at the lower levels</p> <p>2 as far as negotiations of contracts. As I moved up</p> <p>3 the management chain, I actually had less</p> <p>4 opportunity to actually sit down with a contractor</p> <p>5 and negotiate the terms and conditions and price of</p> <p>6 contracts. However, I did continue to review that</p> <p>7 contracting process that was executed by lower</p> <p>8 subordinates throughout my career in contracting.</p> <p>9 Then if I may, even -- even after I</p> <p>10 actually left the position of director of</p> <p>11 contracting in 1994 -- or 1995, pardon me, I</p> <p>12 continued to be deeply involved in the contracting</p> <p>13 process throughout the rest of my time until I</p> <p>14 retired in 2001. And then even subsequently I've</p> <p>15 been involved in federal contracting as a consultant</p> <p>16 and an expert witness on cases such as the</p> <p>17 Miami-Dade and then this one.</p> <p>18 BY MR. BARR:</p> <p>19 Q. Now, in Miami-Dade, did the court accept</p> <p>20 you as an expert in government contracting?</p> <p>21 A. Yes, they did.</p> <p>22 Q. Now, getting back, you mentioned that</p> <p style="text-align: right;">Page 36</p>
<p>1 a director of contracting, who was an SCS, at each</p> <p>2 of the five air material areas. There was one at</p> <p>3 the aeronautical systems center at Wright-Patterson</p> <p>4 Air Force Base. There was one at headquarters Air</p> <p>5 Force material area --</p> <p>6 BY MR. BARR:</p> <p>7 Q. I don't think you need to --</p> <p>8 A. Okay.</p> <p>9 Q. -- describe each of them. When you say</p> <p>10 there were ten senior executive service members,</p> <p>11 were these the highest ranking civilians in the Air</p> <p>12 Force contracting?</p> <p>13 A. Yes, they were.</p> <p>14 Q. And you were one of them?</p> <p>15 A. Yes.</p> <p>16 Q. Now, as far as the -- looking at your</p> <p>17 career as a whole, how would you characterize your</p> <p>18 experience in the award and administration of</p> <p>19 contracts to defense contractors?</p> <p>20 MR. WINE: Objection, vague and</p> <p>21 ambiguous.</p> <p>22 A. My actual hands-on experience was</p> <p style="text-align: right;">Page 35</p>	<p>1 you had had experience with -- I believe you</p> <p>2 mentioned General Dynamics and McDonnell Douglas.</p> <p>3 Can you give us some other examples of defense</p> <p>4 manufacturing companies with whom you had direct</p> <p>5 experience?</p> <p>6 A. Intercontinental Engine Service in</p> <p>7 Brownsville. Gary Aircraft Corporation at San</p> <p>8 Antonio. There was a subcontractor to Pratt &</p> <p>9 Whitney on the F-100 engine in Long Beach -- pardon</p> <p>10 me, Long Island that I visited on a couple of</p> <p>11 occasions. I visited the Pratt & Whitney plant</p> <p>12 where they did repair and maintenance of F-100</p> <p>13 engines down in Florida. I visited the Rolls Royce</p> <p>14 plant in Scotland. I visited the General Electric</p> <p>15 plant in New Hampshire -- pardon me, outside of</p> <p>16 Boston. And those are the ones that come</p> <p>17 immediately to mind.</p> <p>18 Q. Did you have any direct experience with</p> <p>19 Northrop?</p> <p>20 A. I was involved in award of contracts to</p> <p>21 Northrop for the T-38 and F-5 aircraft. However, I</p> <p>22 do not recall ever visiting the Northrop plant.</p> <p style="text-align: right;">Page 37</p>

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<p>1 Q. Okay. Can you estimate the number of</p> <p>2 defense contractors with whom you negotiated</p> <p>3 contracts during your career as a warranted</p> <p>4 contracting officer?</p> <p>5 A. I did not keep an inventory of those</p> <p>6 contracts, but it was certainly in the hundreds of</p> <p>7 contractors.</p> <p>8 Q. And can you estimate the number of</p> <p>9 contracts that were negotiated by subordinates that</p> <p>10 you reviewed and approved?</p> <p>11 A. Again, I did not keep an inventory of</p> <p>12 those contracts, but it was probably well in excess</p> <p>13 of a thousand.</p> <p>14 Q. Now, I take it that you were not</p> <p>15 yourself a government inspector; is that correct?</p> <p>16 A. That is correct.</p> <p>17 Q. Did you work with government inspectors</p> <p>18 in the course of your career?</p> <p>19 A. Yes, I did.</p> <p>20 Q. Can you estimate the number of</p> <p>21 government inspectors with whom you worked during</p> <p>22 that period?</p> <p style="text-align: right;">Page 38</p>	<p>1 upon statute. Statutes required that all</p> <p>2 procurements be made by formal advertising with the</p> <p>3 exception of -- and I think there were 17 specific</p> <p>4 exceptions to the law. So we had a document which</p> <p>5 ones of those exceptions was applicable to a</p> <p>6 specific procurement, and then come up with a</p> <p>7 written document that authorized the negotiation of</p> <p>8 a specific contract.</p> <p>9 And then subsequently the</p> <p>10 preparation of the solicitation document, if you</p> <p>11 will, request for proposal, the receipt of the</p> <p>12 contractor's proposal, a valuation of that proposal</p> <p>13 to make sure that it was, in fact, responsive to our</p> <p>14 solicitation, the request for assistance from the</p> <p>15 defense contract administrative services, or the</p> <p>16 DCAA auditors, in evaluating the contractor's cost</p> <p>17 and pricing data submitted in response to that</p> <p>18 proposal, make sure that they were compliant with</p> <p>19 the Truth in Negotiations Act, if you will, the</p> <p>20 TINA. And then receiving the recommendations of the</p> <p>21 administrative contracting officer and his staff and</p> <p>22 the defense contract audit agency evaluating those</p> <p style="text-align: right;">Page 40</p>
<p>1 A. My best estimate would be in the</p> <p>2 vicinity of a hundred.</p> <p>3 Q. Now, let's get back to your</p> <p>4 responsibilities as a procuring contracting officer,</p> <p>5 or PCO. Could you describe for the court what your</p> <p>6 responsibilities were as a PCO?</p> <p>7 A. It started with the identification of an</p> <p>8 Air Force requirement by our acquiring activities,</p> <p>9 such as inventory managers or program managers, and</p> <p>10 then working with those individuals in the</p> <p>11 preparation of documents called purchase requests to</p> <p>12 make sure that they were complete and suitable for</p> <p>13 our use and to initiate the procurement process.</p> <p>14 Q. Did that include working with engineers?</p> <p>15 A. Very definitely.</p> <p>16 Q. Okay. Please go ahead.</p> <p>17 A. Then the preparation of, as I had</p> <p>18 indicated earlier, the procurement plan. And then</p> <p>19 for every negotiated procurement, we had to prepare</p> <p>20 a justification and approval to document the</p> <p>21 authorization for the negotiation of the Armed</p> <p>22 Services Procurement Regulation which was predicated</p> <p style="text-align: right;">Page 39</p>	<p>1 recommendations, and then actually having</p> <p>2 face-to-face negotiations with the contractor to</p> <p>3 arrive at an agreement upon price and delivery and</p> <p>4 other terms and conditions that would ultimately</p> <p>5 result in a contract. And then finally the</p> <p>6 preparation of the contract document that reflected</p> <p>7 the agreement between the government and the</p> <p>8 contractor.</p> <p>9 Q. Did the responsibilities of you -- did</p> <p>10 your responsibilities as a PCO continue after the</p> <p>11 award of the contract?</p> <p>12 A. To the extent that it frequently</p> <p>13 required us to clarify the intent of documents, such</p> <p>14 as the purchase description or contract, as it</p> <p>15 pertained to specifications and then any questions</p> <p>16 that came up either by the administrative</p> <p>17 contracting officer or the contract as to the</p> <p>18 meaning and intent of the contractual document.</p> <p>19 Q. Now, you mentioned the administrative</p> <p>20 contracting officer, so I'd like to talk about that</p> <p>21 for a minute.</p> <p>22 Was an administrative contracting</p> <p style="text-align: right;">Page 41</p>

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<p>1 officer, that position different from the position 2 that you held?</p> <p>3 A. They were different insofar as the roles 4 and responsibilities of a procuring contracting 5 officer. Essentially led up to the point of 6 contract award, even though there was some 7 involvement subsequent to contract award. And then 8 the roles and responsibilities of the administrative 9 contracting officer primarily concerned the 10 administration of the contract subsequent to 11 contract award.</p> <p>12 Q. And when you say "administration of the 13 contract subsequent," to what extent? And if you 14 don't understand what I'm getting at --</p> <p>15 A. To -- well, to the extent that he was 16 responsible for such things as processing specific 17 requests from the contractor for progress payments. 18 He was responsible for assuring that the contractor 19 complied with the document we called a DD-254, which 20 was the classification of documents pertaining to a 21 specific contract and that the contractor had the 22 proper safeguards for classified information, and</p> <p style="text-align: right;">Page 42</p>	<p>1 facilities?</p> <p>2 A. Yes, it was. For example, in San 3 Antonio we had a defense contract management 4 services office here in San Antonio and they 5 administered all of the smaller contracts within the 6 jurisdiction of their office and it was -- and I 7 don't remember the specifics, but it was like a 8 100-mile radius of San Antonio.</p> <p>9 Q. Were administrative contracting officers 10 also involved in the closeout or termination of 11 contracts?</p> <p>12 A. They were involved in the closeout of 13 contracts. The termination settlement was within 14 the jurisdiction of administrative contracting 15 officers. We had at the procuring activity an 16 individual who was designated as the termination 17 contracting officer. And so when a decision was 18 made to terminate a contract, either for convenience 19 or default, the -- as we called it, a TCO at the 20 procuring activity processed all of the notices to 21 the contractor relative to the termination, and then 22 it was up to the administrative contracting officer</p> <p style="text-align: right;">Page 44</p>
<p>1 then all other facets of the contract that pertained 2 to contractor performance.</p> <p>3 Q. Is this -- are we talking now at this 4 point on a day-to-day level?</p> <p>5 A. On major contracts, very definitely 6 there was a day-to-day involvement of the 7 administrative contractor officer. On smaller 8 procurements, for example, such as a purchase 9 request for \$2,000, he probably had very little in 10 day-to-day involvement.</p> <p>11 Q. Were some ACOs stationed at contractors' 12 facilities?</p> <p>13 A. Particularly those major contractors 14 such as General Dynamics and McDonnell Douglas, they 15 had a resident administrative contracting officer. 16 For smaller contracts, they had a contracting 17 officer stationed at a central location who 18 administered multiple contracts, had multiple 19 contractor locations, but they were not what I would 20 call major contracts or major contractors.</p> <p>21 Q. When you say "a central location," was 22 the central location outside of the contractors'</p> <p style="text-align: right;">Page 43</p>	<p>1 to close out and settle that termination and any 2 claims that were incident to that termination.</p> <p>3 Q. Just so we have the terminology 4 straight, can a -- contracts have been closed out in 5 ways other than termination?</p> <p>6 A. By successful completion and delivery of 7 the product or services that were called out in the 8 contract.</p> <p>9 Q. Did the administrative contracting 10 officer have responsibilities relating to the 11 quality assurance program of a contractor?</p> <p>12 A. The administrative contracting officer 13 did not have the responsibilities of inspection, but 14 there were inspectors in -- I think there were in 15 the series called GS-1910 that were working with the 16 administrative contracting officer. I don't think 17 that they actually were under the supervision of the 18 administrative contracting officer, but they were in 19 the same office and worked very closely with the 20 administrative contracting officer and they were 21 charged with the responsibility of monitoring the 22 contractor's inspection system and then inspecting,</p> <p style="text-align: right;">Page 45</p>

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<p>1 sometimes on a statistical sampling basis, the</p> <p>2 product that had been produced by the contractor.</p> <p>3 And then the signature of a document called DD-250,</p> <p>4 the material inspection and receiving report, which</p> <p>5 was a document that authorized the government to</p> <p>6 make payment for the product produced.</p> <p>7 Q. Now, when you said that the inspection</p> <p>8 was sometimes done on a statistical sampling basis,</p> <p>9 was there another method by which government</p> <p>10 inspectors performed their duties?</p> <p>11 A. Based upon my experience, primarily what</p> <p>12 the inspectors would do would be to review the</p> <p>13 documentation that had been prepared by the</p> <p>14 contractor on the product as it went through the</p> <p>15 various stages of processes and production. There</p> <p>16 was a system that the procuring contracting</p> <p>17 officer -- because of quality problems being</p> <p>18 experienced by the users in the field, we could</p> <p>19 establish a mandatory inspection of certain physical</p> <p>20 characteristics of every product. But absent that</p> <p>21 what we call mandatory A inspection requirement,</p> <p>22 best of my knowledge and based upon my experience,</p> <p style="text-align: right;">Page 46</p>	<p>1 contracting?</p> <p>2 MR. WINE: Objection, assumes facts</p> <p>3 not in evidence.</p> <p>4 BY MR. BARR:</p> <p>5 Q. Were you certified at level III in</p> <p>6 contracting?</p> <p>7 A. In 1990 there was a statute which was</p> <p>8 signed into law called the Defense Work Force --</p> <p>9 Acquisition Work Force Improvement Act, DWIA, and it</p> <p>10 had different levels of certification required and</p> <p>11 then the requirements for being certified at those</p> <p>12 various levels. I was certified at a level III</p> <p>13 under the provisions of the Defense Acquisition Work</p> <p>14 Force Improvement Act, which is the highest level of</p> <p>15 certification in contracting.</p> <p>16 Q. And when did you get this certification,</p> <p>17 approximately?</p> <p>18 A. I don't remember exactly when it was,</p> <p>19 but it was sometime in the early 1990s.</p> <p>20 Q. Okay. And what does it mean -- for</p> <p>21 those of us who are not familiar with defense</p> <p>22 contracting, what does it mean to receive this</p> <p style="text-align: right;">Page 48</p>
<p>1 they never inspected 100 percent of every product</p> <p>2 that was produced. It was just physically</p> <p>3 impossible to check every characteristic.</p> <p>4 Q. And can you estimate the number of ACOs</p> <p>5 with whom you worked over the years?</p> <p>6 A. My best estimate would be somewhere in</p> <p>7 the vicinity of 100, more or less.</p> <p>8 Q. Now, as a PCO, was it part of your</p> <p>9 duties and responsibilities to direct or supervise</p> <p>10 the prevention of chemical spills or waste disposal</p> <p>11 activities of any contractors?</p> <p>12 A. No, it was not.</p> <p>13 Q. Based on your experience over the years,</p> <p>14 was it part of the duties and responsibilities of</p> <p>15 the ACOs to do those things?</p> <p>16 A. Based upon my experience and my review</p> <p>17 of documents, it was not the responsibility of the</p> <p>18 ACO to supervise those kinds of things.</p> <p>19 Q. Now, I believe you mentioned this</p> <p>20 earlier, but -- or this may have been covered in an</p> <p>21 earlier deposition that you gave in this case. You</p> <p>22 indicate that you had been certified at level III in</p> <p style="text-align: right;">Page 47</p>	<p>1 certification?</p> <p>2 A. It carried with it certain</p> <p>3 responsibilities or continuing education and</p> <p>4 training. My recollection is that in order to</p> <p>5 retain your certification at level III, you had to</p> <p>6 receive 200 hours of training every two years in</p> <p>7 contracting-related issues. And it was, if you</p> <p>8 will, kind of a badge of honor to be certified at</p> <p>9 the level III, which is a higher-level</p> <p>10 certification.</p> <p>11 Q. Did you comply with that requirement and</p> <p>12 receive 200 hours of training every two years?</p> <p>13 A. Yes, I did.</p> <p>14 Q. For the period of 1995 through 2001,</p> <p>15 what was your area of concentration? What was your</p> <p>16 focus during that period?</p> <p>17 A. On the 13th of July of 1995, President</p> <p>18 Clinton accepted the recommendations of the base</p> <p>19 closure commission and that started the clock for</p> <p>20 closure of Kelly Air Force Base. I raised my hand</p> <p>21 and volunteered to the installation commander to</p> <p>22 head up the organization that would oversee those,</p> <p style="text-align: right;">Page 49</p>

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<p>1 as we called it, BRAC activities for the</p> <p>2 installation. From 1995 through late 1996, I was</p> <p>3 dual hatted, if you will. I served both in the</p> <p>4 capacity of director of contracting and the director</p> <p>5 of BRAC implementation. Then it became obvious that</p> <p>6 it was more than I could handle to say -- say grace</p> <p>7 over both of those programs, so the Air Force made a</p> <p>8 decision to bring in an Air Force colonel as the</p> <p>9 director of contracting. And then from that point</p> <p>10 forward I concentrated my energies upon closure</p> <p>11 activities and all things that were related to that</p> <p>12 closure. Then in -- about six months, seven months</p> <p>13 before closure I was selected as the executive</p> <p>14 director of the San Antonio air material area and I</p> <p>15 was the -- if you will, the senior civilian. For</p> <p>16 all intents and purposes, I was the vice commander</p> <p>17 of the installation until we closed, and then I</p> <p>18 retired in June -- July of 2001.</p> <p>19 Q. Mr. Jordan, have you ever been a lawyer?</p> <p>20 A. I have not.</p> <p>21 Q. To your knowledge, were any of your</p> <p>22 direct supervisors lawyers?</p> <p style="text-align: right;">Page 50</p>	<p>1 point?</p> <p>2 A. At some point, I don't remember the</p> <p>3 exact date, but the ASPRs were superseded by the</p> <p>4 Federal Acquisition Regulations, the FARs. Then the</p> <p>5 FAR became the document that pertained to all</p> <p>6 government contracts and not just the Department of</p> <p>7 Defense. The ASPR was limited to contracts executed</p> <p>8 by the Department of Defense. The FAR pertained to</p> <p>9 all federal contracts.</p> <p>10 Q. Did you use the ASPRs and the FARs in</p> <p>11 the ordinary course of your duties and</p> <p>12 responsibilities?</p> <p>13 A. For most of my career I -- either -- I</p> <p>14 had a set of ASPRs and/or FARs either in the office</p> <p>15 within 15 feet of my desk or actually on my desk,</p> <p>16 and I referred to them most days multiple times</p> <p>17 every day.</p> <p>18 Q. Now, as part of your duties and</p> <p>19 responsibilities as an Air Force contracting</p> <p>20 official, did you deal with issues relating to the</p> <p>21 reasonableness of costs?</p> <p>22 MR. WINE: Objection, vague and</p> <p style="text-align: right;">Page 52</p>
<p>1 A. Best of my knowledge, they were not.</p> <p>2 Q. Now, you mentioned earlier something</p> <p>3 called the ASPRs. What does "ASPR" stand for?</p> <p>4 A. Armed Services Procurement Regulations.</p> <p>5 Q. And could you describe for the court</p> <p>6 what the ASPRs were?</p> <p>7 A. The ASPRs -- the first edition of the</p> <p>8 ASPR was published in 1948 after the federal</p> <p>9 government formally established the Department of</p> <p>10 Defense and the services within the Department of</p> <p>11 Defense, such as the Air Force and the Navy. The</p> <p>12 ASPR was basically a document that contained all of</p> <p>13 the customs and practices, policies and procedures</p> <p>14 pertaining to government contracting. Most of those</p> <p>15 customs and practices were predicated upon various</p> <p>16 statutes that had been promulgated by Congress and</p> <p>17 the administration.</p> <p>18 Q. Let me stop you there. Did you work</p> <p>19 with the statutes themselves or with the ASPRs?</p> <p>20 A. Worked with the ASPRs.</p> <p>21 Q. Did the -- did another set of</p> <p>22 regulations take the place of the ASPRs at some</p> <p style="text-align: right;">Page 51</p>	<p>1 ambiguous.</p> <p>2 A. On every contract that was</p> <p>3 noncompetitive, we had to make a determination as to</p> <p>4 reasonableness of cost.</p> <p>5 BY MR. BARR:</p> <p>6 Q. Now, is reasonableness of cost -- is</p> <p>7 that a term of art in government contracting?</p> <p>8 A. It is a term of art. It pertains to an</p> <p>9 examination of all of the elements of those costs</p> <p>10 submitted by the contractor to either verify that</p> <p>11 they had been reviewed and approved by either the</p> <p>12 administrative contracting officer or a DCAA, such</p> <p>13 as in the case of overhead accounts. On many</p> <p>14 contractors the PCO did not have to negotiate the</p> <p>15 overhead rates. Those were established on an annual</p> <p>16 basis by the administrative contracting officer with</p> <p>17 the input of the defense contract audit agency. And</p> <p>18 so all we had to do was to verify that the rates</p> <p>19 submitted by the contractor were, in fact,</p> <p>20 consistent with those rates that had been approved</p> <p>21 by the ACO and/or DCAA. Then we negotiated --</p> <p>22 evaluated and negotiated the material and labor</p> <p style="text-align: right;">Page 53</p>

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<p>1 content of the price.</p> <p>2 Q. Now, are you familiar with the term</p> <p>3 "direct labor and material"?</p> <p>4 A. Yes, I am.</p> <p>5 Q. Are those the kinds of cost issues that</p> <p>6 you negotiated?</p> <p>7 A. Yes, they are.</p> <p>8 Q. During the course of your career, did</p> <p>9 the contracts with which you negotiated and</p> <p>10 awarded -- well, did any of the contracts that you</p> <p>11 negotiated and awarded include progress payments</p> <p>12 clauses?</p> <p>13 A. Very often, very frequently.</p> <p>14 Q. And did you become familiar with the</p> <p>15 ASPR and FAR provisions relating to progress</p> <p>16 payments?</p> <p>17 A. Yes, I did.</p> <p>18 Q. Now, let's shift gears a little bit</p> <p>19 toward classified information. I believe you</p> <p>20 alluded to that a few minutes ago. To what extent</p> <p>21 did classified information become a factor in the</p> <p>22 work that you did?</p> <p style="text-align: right;">Page 54</p>	<p>1 facilities?</p> <p>2 MR. WINE: Objection, relevance.</p> <p>3 A. They did not.</p> <p>4 BY MR. BARR:</p> <p>5 Q. In any of the contracts with which you</p> <p>6 were directly associated, did any of the classified</p> <p>7 information, to your knowledge, pertain to the usage</p> <p>8 of chemicals in the processing operations of any</p> <p>9 contractors?</p> <p>10 MR. WINE: Same objection.</p> <p>11 A. Best of my knowledge, they did not.</p> <p>12 BY MR. BARR:</p> <p>13 Q. As part of your duties and</p> <p>14 responsibilities between 1962 and the mid 1990s, did</p> <p>15 you work with the defense contract audit agency?</p> <p>16 A. Yes, I did.</p> <p>17 Q. Could you explain the nature of your</p> <p>18 work with that group.</p> <p>19 A. It was relative to the preparation for</p> <p>20 and the negotiation of contracts that were based</p> <p>21 upon price and cost data submitted by the</p> <p>22 contractor, and we frequently, during that</p> <p style="text-align: right;">Page 56</p>
<p>1 MR. WINE: Objection, vague and</p> <p>2 ambiguous.</p> <p>3 A. I did award several contracts that</p> <p>4 included classified information or a requirement for</p> <p>5 the contractor to have access to classified</p> <p>6 information. The one that comes immediate to mind</p> <p>7 is the B-58 contract that I alluded to earlier. It</p> <p>8 was a very highly classified program inasmuch as the</p> <p>9 B-58 at that point in time was the premier bomber</p> <p>10 for delivery of nuclear ordnance within the Air</p> <p>11 Force inventory. It had some performance</p> <p>12 deficiencies and there was a presidential priority</p> <p>13 for correcting those deficiencies so that there</p> <p>14 was -- all of the performance characteristics of</p> <p>15 those deficiencies and what the contractor was doing</p> <p>16 to correct those deficiencies was very highly</p> <p>17 classified.</p> <p>18 BY MR. BARR:</p> <p>19 Q. In any of the contracts with which you</p> <p>20 were directly associated, did any of the classified</p> <p>21 information, to your knowledge, pertain to the</p> <p>22 handling of chemical waste at defense contractors'</p> <p style="text-align: right;">Page 55</p>	<p>1 negotiation process and the preparation for the</p> <p>2 negotiations, met with DCAA to have a more clear</p> <p>3 understanding of some of the positions taken by</p> <p>4 DCAA.</p> <p>5 Q. What type of background and training did</p> <p>6 DCAA personnel have, to the best of your knowledge,</p> <p>7 generally speaking?</p> <p>8 MR. WINE: Objection, competence.</p> <p>9 A. Best of my knowledge, they were</p> <p>10 primarily auditors, accountants.</p> <p>11 BY MR. BARR:</p> <p>12 Q. And is that based on your working with</p> <p>13 them?</p> <p>14 A. Yes, it is.</p> <p>15 Q. Was your interaction with DCAA personnel</p> <p>16 limited to preaward to -- let me start over again.</p> <p>17 Was your interaction with DCAA</p> <p>18 personnel limited to events before the award of</p> <p>19 contracts?</p> <p>20 MR. WINE: Objection, leading.</p> <p>21 A. Primarily, yes.</p> <p>22 BY MR. BARR:</p> <p style="text-align: right;">Page 57</p>

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<p>1 Q. Did any of your work with them include</p> <p>2 interactions during contract performance or contract</p> <p>3 conclusion?</p> <p>4 A. Not that I recall.</p> <p>5 Q. Okay. Let's focus on ways in which you</p> <p>6 believe you can assist the court in this case</p> <p>7 regarding government contracting in terms of</p> <p>8 specialized knowledge.</p> <p>9 Can you explain ways that you</p> <p>10 believe you can help the court?</p> <p>11 A. I have spent almost 50 years of my life</p> <p>12 related in one way or another with the contracting</p> <p>13 process. I think I can help the court understand</p> <p>14 the customs and procedures relative to that</p> <p>15 contracting process. There are many terms of art</p> <p>16 associated with the contracting process that I have</p> <p>17 obtained over the course of my career that many</p> <p>18 laymen would not have the same interpretation and</p> <p>19 understanding of those terms of art that I have</p> <p>20 through my experience and training.</p> <p>21 I think I can help the court</p> <p>22 understand the regulations that govern the</p> <p style="text-align: right;">Page 58</p>	<p>1 A. I reviewed a significant number of</p> <p>2 documents.</p> <p>3 Q. Can you estimate the volume?</p> <p>4 A. I estimate that it would be well in</p> <p>5 excess of 1,000 documents. I have no way of</p> <p>6 estimating the number of pages, but it was possibly</p> <p>7 tens of thousands of pages of documents. They</p> <p>8 consisted of contracts that have survived time, the</p> <p>9 Armed Services Procurement Regulations and the FARs</p> <p>10 that pertain to the acquisition process, documents</p> <p>11 that have survived, such as minutes of Ryan</p> <p>12 stockholder meetings, board of directors' meetings,</p> <p>13 presentations to the stockholders of the</p> <p>14 corporation, specifications that were incorporated</p> <p>15 into contracts that were awarded to the contractor,</p> <p>16 contractor prepared documents such as -- they're</p> <p>17 called military process data, MPDs, that were</p> <p>18 prepared --</p> <p>19 Q. I'm sorry, do you mean manufacturing?</p> <p>20 A. -- manufacturing process data, MPDs,</p> <p>21 that were prepared by the contractor for various</p> <p>22 processes, contractor reports, DCAA audits, minutes</p> <p style="text-align: right;">Page 60</p>
<p>1 acquisition process from their earliest inception</p> <p>2 throughout this entire relevant period of the</p> <p>3 litigation through the current time, the</p> <p>4 similarities or changes in those regulations, how</p> <p>5 those regulations were used to form the basis of</p> <p>6 contracts that were awarded to the contractor during</p> <p>7 this relevant period. The similarities in the</p> <p>8 contract documents over time. Why I believe that --</p> <p>9 even though there are many contracts that have not</p> <p>10 survived time, that we can relate those terms,</p> <p>11 conditions of the contracts that have survived to</p> <p>12 the contracts that have not survived because of the</p> <p>13 relationship between those contractual documents and</p> <p>14 the regulations that have, in fact, survived over</p> <p>15 time. And then the roles and responsibilities of</p> <p>16 the various government employees that were actively</p> <p>17 involved in the award administration or closeout of</p> <p>18 various contracts with the contractor.</p> <p>19 Q. Okay. Let's focus on the methodology of</p> <p>20 your work in this case. Can you review, in general</p> <p>21 terms of course, the steps that you took in arriving</p> <p>22 at your conclusions in this case?</p> <p style="text-align: right;">Page 59</p>	<p>1 of program reviews that have been conducted at the</p> <p>2 contractors' facilities on various contracts,</p> <p>3 correspondence pertaining to subcontracts that have</p> <p>4 been awarded by various companies to the</p> <p>5 contractors, such as Hughes Aircraft or the</p> <p>6 helicopter fuselage sections.</p> <p>7 Q. Did the types of documents you reviewed</p> <p>8 include contracting procedure and policy manuals?</p> <p>9 MR. WINE: Objection, leading.</p> <p>10 A. Yes, that was part of the ASPR, and</p> <p>11 there were some other attendant documents that had</p> <p>12 been prepared by the government, such as the</p> <p>13 inspector's familiarization manual that was in the</p> <p>14 World War II era.</p> <p>15 MR. WINE: We've been going for over</p> <p>16 an hour. Can we take a break?</p> <p>17 MR. BARR: Actually I'd rather go</p> <p>18 for another few minutes.</p> <p>19 MR. WINE: How much longer do you</p> <p>20 have?</p> <p>21 MR. BARR: Well, before we break, I</p> <p>22 want to -- maybe another 15 minutes.</p> <p style="text-align: right;">Page 61</p>

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<p>1 BY MR. BARR:</p> <p>2 Q. Mr. Jordan, have you also reviewed the</p> <p>3 expert reports and depositions of any of TDY's</p> <p>4 experts in this case?</p> <p>5 A. I have reviewed a number of depositions</p> <p>6 pertaining to this case, yes, I have.</p> <p>7 Q. Do you recall the names of some of those</p> <p>8 that you reviewed?</p> <p>9 A. McGill --</p> <p>10 Q. Well, I'm referring to experts for the</p> <p>11 moment.</p> <p>12 A. The experts, I reviewed Dr. Carlisle's</p> <p>13 and Mr. Zoch's. Those are the two that come</p> <p>14 immediately to mind.</p> <p>15 Q. Okay. And did you review the available</p> <p>16 fact witness depositions as well?</p> <p>17 A. Yes, I did.</p> <p>18 Q. Now, after you reviewed the various</p> <p>19 documents that you have described, what did you do</p> <p>20 with that information?</p> <p>21 A. I used that information to formulate</p> <p>22 various opinions that were expressed either in my</p> <p style="text-align: right;">Page 62</p>	<p>1 within that database. I think as I indicated in my</p> <p>2 December of 2009 deposition, I did not keep a</p> <p>3 specific inventory of all those word searches so I</p> <p>4 can't tell you exactly what words I searched for,</p> <p>5 how many I did; but I did do a significant number of</p> <p>6 word searches.</p> <p>7 BY MR. BARR:</p> <p>8 Q. Did some of those word searches reveal</p> <p>9 documents that you found to be significant?</p> <p>10 MR. WINE: Objection.</p> <p>11 A. Yes, they did. And then I also found a</p> <p>12 significant number of documents that had no bearing</p> <p>13 upon the case whatsoever.</p> <p>14 BY MR. BARR:</p> <p>15 Q. Did you request additional word searches</p> <p>16 be done for you by Justice Department personnel?</p> <p>17 A. I did request a relatively significant</p> <p>18 number of documents from DOJ. I don't know how many</p> <p>19 word searches were conducted by DOJ to retrieve</p> <p>20 those documents, but, yes, I did request specific</p> <p>21 documents and those were provided to me.</p> <p>22 Q. Now, did you speak to former auditors --</p> <p style="text-align: right;">Page 64</p>
<p>1 expert report or which I expressed in my two</p> <p>2 depositions I gave in December of 2009 and then my</p> <p>3 preparation for this deposition.</p> <p>4 Q. How did -- how, if at all, did your</p> <p>5 personal experience over the years assist you in</p> <p>6 forming your opinions?</p> <p>7 A. As I indicated earlier, my experience</p> <p>8 has allowed me to become familiar with a lot of the</p> <p>9 terms of art in review of contractual documents and</p> <p>10 those documents that are related to the contracts.</p> <p>11 And so I can easily take a contract that had been</p> <p>12 prepared and awarded to Teledyne and review it and</p> <p>13 have a very good understanding of what the intent of</p> <p>14 that contract was.</p> <p>15 Q. In terms of the research that you did in</p> <p>16 the preparation of reports and in preparation to</p> <p>17 testify both in 2009 and today, did you perform</p> <p>18 personal word searches in the Justice Department</p> <p>19 document databases?</p> <p>20 MR. WINE: Objection, leading.</p> <p>21 A. I was given access to the DOJ database</p> <p>22 and I performed a significant number of searches</p> <p style="text-align: right;">Page 63</p>	<p>1 former government auditors who had worked at the</p> <p>2 site?</p> <p>3 A. As I indicated in prior deposition, I</p> <p>4 did have a conversation with Theresa Lawson who was</p> <p>5 a DCAA auditor and Mr. Woodworth who was an</p> <p>6 administrative contracting officer.</p> <p>7 Q. I would like to mark as Exhibits 3 and 4</p> <p>8 the two reports that you prepared in this case.</p> <p>9 (Deposition Exhibit 3 marked.)</p> <p>10 (Deposition Exhibit 4 marked.)</p> <p>11 BY MR. BARR:</p> <p>12 Q. For the moment the only questions I'll</p> <p>13 have for you are whether you recognize them.</p> <p>14 A. Yes, I do.</p> <p>15 Q. Is that your signature on each one?</p> <p>16 A. Yes, it is.</p> <p>17 Q. All right. Now, in some documents that</p> <p>18 have been used in this case the word "cognizance" is</p> <p>19 used. Do you recall that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. In the defense contracting context what</p> <p>22 does "cognizance" mean?</p> <p style="text-align: right;">Page 65</p>

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<p>1 MR. WINE: Objection, vague and</p> <p>2 ambiguous.</p> <p>3 A. Cognizance means that a specific agency</p> <p>4 or individual has been assigned administrative</p> <p>5 responsibility for a specific contract or a specific</p> <p>6 program, and it had no other meaning other than that</p> <p>7 they have been designated, if you will, as the lead</p> <p>8 agency for administration of a specific contractor</p> <p>9 at a specific location.</p> <p>10 BY MR. BARR:</p> <p>11 Q. Does cognizance mean responsibility for</p> <p>12 supervision or direction of contractor personnel?</p> <p>13 MR. WINE: Objection, leading.</p> <p>14 A. It has no connotation whatsoever</p> <p>15 relative to administrative -- or administering the</p> <p>16 contract in such a way that it can be construed as</p> <p>17 supervision of a contractor or contractor's</p> <p>18 employees.</p> <p>19 MR. BARR: All right. This would be</p> <p>20 a good time. Let's just take a ten-minute break.</p> <p>21 THE VIDEOGRAPHER: Going off record.</p> <p>22 Time now is 2:07.</p> <p style="text-align: right;">Page 66</p>	<p>1 nonresponsive to the question.</p> <p>2 BY MR. BARR:</p> <p>3 Q. Let's look at World War II time period</p> <p>4 for a bit. But before we do that, just a little bit</p> <p>5 of basic terminology. Mr. Jordan, what is a supply</p> <p>6 contract?</p> <p>7 A. A supply contract is a contract awarded</p> <p>8 by the government for delivery of a specific piece</p> <p>9 of hardware, a product, if you will, and it is</p> <p>10 distinguished from a service contract where the</p> <p>11 contractor performed a service for the government.</p> <p>12 And in the supply contract it was a specifically</p> <p>13 identified product.</p> <p>14 Q. And what is a prime contract?</p> <p>15 A. Prime contract is a contract directly</p> <p>16 between the government and the contractor for</p> <p>17 delivery of a specific product and/or service.</p> <p>18 Q. And is that different from a</p> <p>19 subcontract?</p> <p>20 A. A subcontract is a contract between the</p> <p>21 prime contractor and one of his suppliers for</p> <p>22 delivery of specified components and/or subproducts,</p> <p style="text-align: right;">Page 68</p>
<p>1 (Recess Taken From 2:07 p.m. To</p> <p>2 2:23 p.m.)</p> <p>3 THE VIDEOGRAPHER: Going back on</p> <p>4 record. Time now is 2:23.</p> <p>5 BY MR. BARR:</p> <p>6 Q. Mr. Jordan, I wanted to follow up on</p> <p>7 your last answer regarding not -- cognizance not</p> <p>8 being construed as supervision of a contract or a</p> <p>9 contractor's employees. Can you explain a little</p> <p>10 bit more what that means?</p> <p>11 A. Cognizance really means that just the</p> <p>12 government was aware of what was going on in a</p> <p>13 contractor's facility. There is nothing either in</p> <p>14 regulation or in practice that had any connotation</p> <p>15 that they had the authority or actually did</p> <p>16 supervise contractor employees. Conversely, there</p> <p>17 are depositions by former contractor employees where</p> <p>18 they said they specifically never observed</p> <p>19 government employees directing or supervising</p> <p>20 contractor employees.</p> <p>21 MR. WINE: Objection to the</p> <p>22 response, assume facts not in evidence and is</p> <p style="text-align: right;">Page 67</p>	<p>1 if you will, to be used by the contractor in</p> <p>2 performance of the prime contract.</p> <p>3 Q. Now, focusing on World War II, did you</p> <p>4 review contracts between Ryan and the military</p> <p>5 during the World War II period?</p> <p>6 MR. WINE: Objection, goes beyond</p> <p>7 the area of expertise of the expert.</p> <p>8 A. Yes, I did review those contracts.</p> <p>9 BY MR. BARR:</p> <p>10 Q. And did you review those contracts in</p> <p>11 light of your experience as a government contracting</p> <p>12 officer?</p> <p>13 MR. WINE: Same objection.</p> <p>14 A. Yes, I did.</p> <p>15 BY MR. BARR:</p> <p>16 Q. I'll mark as -- I believe this will be</p> <p>17 Exhibits --</p> <p>18 MR. WINE: 5.</p> <p>19 BY MR. BARR:</p> <p>20 Q. -- 5 through 12 -- or 5 through 11, I'm</p> <p>21 not quite sure -- a number of documents, and I'll</p> <p>22 ask you if you have seen these before.</p> <p style="text-align: right;">Page 69</p>

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<p>1 (Deposition Exhibit 5 marked.)</p> <p>2 (Deposition Exhibit 6 marked.)</p> <p>3 (Deposition Exhibit 7 marked.)</p> <p>4 (Deposition Exhibit 8 marked.)</p> <p>5 (Deposition Exhibit 9 marked.)</p> <p>6 (Deposition Exhibit 10 marked.)</p> <p>7 (Deposition Exhibit 11 marked.)</p> <p>8 (Witness Reviews Documents.)</p> <p>9 A. Yes, I have.</p> <p>10 BY MR. BARR:</p> <p>11 Q. Now, one of these exhibits is a 1943</p> <p>12 letter of intent.</p> <p>13 MR. WINE: Which exhibit?</p> <p>14 BY MR. BARR:</p> <p>15 Q. Do you have that in front of you,</p> <p>16 Mr. Jordan?</p> <p>17 A. Yes. It's Exhibit No. 9.</p> <p>18 Q. What is a letter of intent?</p> <p>19 A. It is a document issued by the</p> <p>20 government to a contractor that it intends to issue</p> <p>21 a formal contract for specified services. They were</p> <p>22 used more frequently in the World War II era than</p> <p style="text-align: right;">Page 70</p>	<p>1 Q. Did you -- were you involved in awarding</p> <p>2 contracts for which letters of intent had previously</p> <p>3 been issued?</p> <p>4 A. No.</p> <p>5 MR. WINE: Objection.</p> <p>6 BY MR. BARR:</p> <p>7 Q. What was the nature of your experience</p> <p>8 with letters of intent?</p> <p>9 MR. WINE: Objection, asked and</p> <p>10 answered.</p> <p>11 A. Strictly I was aware of the fact that</p> <p>12 letters of intent had been used. They were</p> <p>13 superseded by definitive contracts and in this case</p> <p>14 this specific letter of intent was superseded by a</p> <p>15 contract identified as Exhibit No. 10.</p> <p>16 BY MR. BARR:</p> <p>17 Q. Is that consistent with your experience</p> <p>18 during your career?</p> <p>19 MR. WINE: Objection, witness has</p> <p>20 testified he's not -- has not had experience in his</p> <p>21 career working with letters of intent; therefore, he</p> <p>22 lacks the requisite knowledge to give expert</p> <p style="text-align: right;">Page 72</p>
<p>1 they were during my actual experience as a</p> <p>2 contracting officer.</p> <p>3 MR. WINE: And on that basis, I</p> <p>4 would like to object to the response as being</p> <p>5 outside the scope of the witness' area of expertise.</p> <p>6 MR. BARR: All right. Thank you.</p> <p>7 BY MR. BARR:</p> <p>8 Q. Mr. Jordan, were you familiar with</p> <p>9 letters of intent during your time as a government</p> <p>10 contracting officer?</p> <p>11 A. Yeah --</p> <p>12 MR. WINE: Objection, relevance.</p> <p>13 A. Yes.</p> <p>14 BY MR. BARR:</p> <p>15 Q. Did you use or encounter letters of</p> <p>16 intent periodically in the course of your</p> <p>17 experience?</p> <p>18 MR. WINE: Objection, vague and</p> <p>19 ambiguous.</p> <p>20 A. I did not use letters of intent during</p> <p>21 my experience.</p> <p>22 BY MR. BARR:</p> <p style="text-align: right;">Page 71</p>	<p>1 testimony in the subject matter.</p> <p>2 BY MR. BARR:</p> <p>3 Q. Could you answer the question?</p> <p>4 A. It is consistent with my understanding</p> <p>5 of the purpose and intent of documents entitled</p> <p>6 "letters of intent."</p> <p>7 Q. And how did you gain this understanding</p> <p>8 as to the purpose and intent of letters of intent?</p> <p>9 A. Strictly through the -- my familiarity</p> <p>10 with the regulations and then some of the training</p> <p>11 courses I had received relative to the history of</p> <p>12 government regulations.</p> <p>13 Q. In your review of these documents that</p> <p>14 we've marked as Exhibits -- I believe it's 5 through</p> <p>15 11, did your review of them allow you to determine</p> <p>16 what kinds of supply contracts these were?</p> <p>17 MR. WINE: Objection, foundation,</p> <p>18 hearsay.</p> <p>19 A. Yes, it did.</p> <p>20 BY MR. BARR:</p> <p>21 Q. What kinds of contracts were these?</p> <p>22 MR. WINE: Objection -- same</p> <p style="text-align: right;">Page 73</p>

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<p>1 objections.</p> <p>2 A. I think they were basically cost plus a</p> <p>3 fixed-fee contract.</p> <p>4 THE REPORTER: Hold on. I need you</p> <p>5 to repeat that.</p> <p>6 THE WITNESS: Cost plus a</p> <p>7 fixed-fee-type contract.</p> <p>8 MR. WINE: Also assert the objection</p> <p>9 it calls for a legal conclusion.</p> <p>10 BY MR. BARR:</p> <p>11 Q. If you could look through these, were</p> <p>12 any of these fixed-price contracts?</p> <p>13 MR. WINE: Objection, vague and</p> <p>14 ambiguous. Lacks proper foundation. Also calls for</p> <p>15 a legal conclusion.</p> <p>16 (Witness Reviews Document.)</p> <p>17 MR. WINE: Also assert the objection</p> <p>18 that the documents go beyond the scope of the expert</p> <p>19 report as they are not referenced in the expert</p> <p>20 report. Correction, an analysis of the documents is</p> <p>21 not referenced in the expert report.</p> <p>22 A. It appears that Exhibits 5 and 6 are a</p> <p style="text-align: right;">Page 74</p>	<p>1 government. They were more difficult to award and</p> <p>2 to administer than a fixed-price contract and so it</p> <p>3 was least desirable.</p> <p>4 MR. WINE: Also object to the answer</p> <p>5 on relevance grounds.</p> <p>6 BY MR. BARR:</p> <p>7 Q. Did you also become familiar with the</p> <p>8 extent to which Ryan during World War II was a</p> <p>9 subcontractor?</p> <p>10 MR. WINE: Objection, leading.</p> <p>11 A. Yes, I did.</p> <p>12 BY MR. BARR:</p> <p>13 Q. And what did you -- just by way of</p> <p>14 background and in general terms, what did you</p> <p>15 determine?</p> <p>16 A. The documents that I reviewed indicated</p> <p>17 that during the war that Ryan performed as a</p> <p>18 subcontractor to other prime contractors on aircraft</p> <p>19 components, and my recollection is that the primary</p> <p>20 product that they produced by the contractor was</p> <p>21 manifolds.</p> <p>22 Q. Let me show you some -- of World War II</p> <p style="text-align: right;">Page 76</p>
<p>1 fixed price.</p> <p>2 BY MR. BARR:</p> <p>3 Q. Okay.</p> <p>4 A. On a cursory review.</p> <p>5 Q. Now, based on your experience during the</p> <p>6 time that you were a government contracting officer,</p> <p>7 is a cost-reimbursement contract a desirable form of</p> <p>8 contracting?</p> <p>9 MR. WINE: Objection, vague and</p> <p>10 ambiguous, leading. Calls for a legal conclusion --</p> <p>11 strike the last objection.</p> <p>12 MR. BARR: Anything else?</p> <p>13 MR. WINE: I'll come up with it in a</p> <p>14 second.</p> <p>15 A. As a contracting officer, we consider</p> <p>16 cost-type contracts to be the least desirable form</p> <p>17 of contracts.</p> <p>18 BY MR. BARR:</p> <p>19 Q. And why is that?</p> <p>20 A. Because it placed the maximum cost risk</p> <p>21 upon the government. In a fixed-price contract the</p> <p>22 cost risk was placed upon the contractor, not the</p> <p style="text-align: right;">Page 75</p>	<p>1 documents and have these marked as exhibits starting</p> <p>2 with No. 12.</p> <p>3 MR. WINE: We done with 5 through</p> <p>4 11?</p> <p>5 MR. BARR: For now.</p> <p>6 (Deposition Exhibit 12 marked.)</p> <p>7 (Deposition Exhibit 13 marked.)</p> <p>8 (Deposition Exhibit 14 marked.)</p> <p>9 (Deposition Exhibit 15 marked.)</p> <p>10 (Deposition Exhibit 16 marked.)</p> <p>11 (Deposition Exhibit 17 marked.)</p> <p>12 (Deposition Exhibit 18 marked.)</p> <p>13 BY MR. BARR:</p> <p>14 Q. Mr. Jordan, if you would briefly review</p> <p>15 those, just glance through them, and I ask you if</p> <p>16 you have reviewed these documents before.</p> <p>17 (Witness Reviews Documents.)</p> <p>18 A. I believe that I have.</p> <p>19 BY MR. BARR:</p> <p>20 Q. Were these documents that you reviewed</p> <p>21 in order to get some background as to the extent to</p> <p>22 which Ryan was a subcontractor during the war?</p> <p style="text-align: right;">Page 77</p>

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<p>1 A. These are some of the documents that I</p> <p>2 reviewed that led me to that conclusion, yes.</p> <p>3 Q. All right. Now, the next subject I'd</p> <p>4 like to move to is the question of releases. Are</p> <p>5 you familiar with the term "releases" in the</p> <p>6 government contracting context?</p> <p>7 MR. WINE: Objection, vague and</p> <p>8 ambiguous.</p> <p>9 A. Yes, I am.</p> <p>10 BY MR. BARR:</p> <p>11 Q. And did you derive that understanding in</p> <p>12 the course of your work and experience between 1962</p> <p>13 and 2001 -- or 1990?</p> <p>14 A. Somewhat, yes.</p> <p>15 Q. When you say "somewhat," can you</p> <p>16 explain?</p> <p>17 A. I was aware that the -- some of the</p> <p>18 contracts that we awarded contained specific</p> <p>19 requirements for releases. The actual documents</p> <p>20 themselves, the releases, that was a responsibility</p> <p>21 of the administrative contracting officer, so I was</p> <p>22 not involved in actually securing contractor's</p> <p style="text-align: right;">Page 78</p>	<p>1 contracts.</p> <p>2 BY MR. BARR:</p> <p>3 Q. Is this -- is that something that you</p> <p>4 learned in the course of your training and tutelage</p> <p>5 under more experienced government contracting</p> <p>6 personnel?</p> <p>7 MR. WINE: Objection.</p> <p>8 A. Yes, it is.</p> <p>9 BY MR. BARR:</p> <p>10 Q. Let me start with No. 19. Going to mark</p> <p>11 three additional exhibits.</p> <p>12 (Deposition Exhibit 19 marked.)</p> <p>13 (Deposition Exhibit 20 marked.)</p> <p>14 (Deposition Exhibit 21 marked.)</p> <p>15 BY MR. BARR:</p> <p>16 Q. Mr. Jordan, if you'd take a moment to</p> <p>17 look through those documents, and I'll ask you if</p> <p>18 you have reviewed those before.</p> <p>19 (Witness Reviews Document.)</p> <p>20 BY MR. BARR:</p> <p>21 Q. With respect to Exhibit 21, while you're</p> <p>22 doing that, let me direct your attention in</p> <p style="text-align: right;">Page 80</p>
<p>1 signature of those releases.</p> <p>2 Q. Were you familiar during the course of</p> <p>3 your experience as a government contracting official</p> <p>4 with the required form and content of releases?</p> <p>5 MR. WINE: Objection.</p> <p>6 A. Yes, I was.</p> <p>7 BY MR. BARR:</p> <p>8 Q. Did you review any Ryan releases of</p> <p>9 claims against the government with respect to World</p> <p>10 War II cost-reimbursement contracts?</p> <p>11 MR. WINE: Objection, assumes facts</p> <p>12 not in evidence and beyond the scope of the witness'</p> <p>13 expertise.</p> <p>14 A. Yes, I did.</p> <p>15 BY MR. BARR:</p> <p>16 Q. Generally speaking, what is the purpose</p> <p>17 of releases -- of such releases?</p> <p>18 MR. WINE: Objection, calls for a</p> <p>19 legal conclusion.</p> <p>20 A. To bring closure and finality to</p> <p>21 contractors, opportunity to submit claims to the</p> <p>22 government against performance under those</p> <p style="text-align: right;">Page 79</p>	<p>1 particular to pages 77 through 80.</p> <p>2 MR. WINE: Objection, foundation.</p> <p>3 A. I can't find 77. Page 77 is --</p> <p>4 MR. WINE: Right down here. That</p> <p>5 page 77.</p> <p>6 A. That's it. Okay. That's the --</p> <p>7 MR. WINE: Bates number.</p> <p>8 A. -- TDYR number, not the page number.</p> <p>9 BY MR. BARR:</p> <p>10 Q. That's correct.</p> <p>11 A. Okay.</p> <p>12 Q. I apologize for the confusion.</p> <p>13 (Witness Reviews Document.)</p> <p>14 A. Okay.</p> <p>15 BY MR. BARR:</p> <p>16 Q. Are these the three release documents</p> <p>17 that you reviewed in this matter?</p> <p>18 MR. WINE: Objection, leading.</p> <p>19 A. 21 is one of the release documents; the</p> <p>20 other two are the other release documents.</p> <p>21 BY MR. BARR:</p> <p>22 Q. We'll go backwards and then we'll come</p> <p style="text-align: right;">Page 81</p>

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<p>1 back to these releases. In the course of the</p> <p>2 deposition, Mr. Jordan, I'm going to use the term</p> <p>3 "hazardous substances," and for purposes of the</p> <p>4 deposition to save time and breath, let's understand</p> <p>5 if we -- if you don't mind, that hazardous</p> <p>6 substances includes chlorinated solvents, chromium</p> <p>7 compounds and PCBs, as well as other things that are</p> <p>8 defined in law as hazardous substances.</p> <p>9 A. Understand.</p> <p>10 Q. Now, in the course of your work on this</p> <p>11 case have you found any evidence that -- as to the</p> <p>12 World War II era or later in the 1940s of any</p> <p>13 government plan or intent to dispose of hazardous</p> <p>14 substance at the Harbor Drive Plant?</p> <p>15 MR. WINE: Objection, vague and</p> <p>16 ambiguous, beyond the area of expertise of the</p> <p>17 witness. The witness is not qualified to give an</p> <p>18 opinion.</p> <p>19 A. I found no such evidence.</p> <p>20 BY MR. BARR:</p> <p>21 Q. And, again, with respect to -- have you</p> <p>22 found any evidence with respect to the World War II</p> <p style="text-align: right;">Page 82</p>	<p>1 containing hazardous substances so that Ryan could</p> <p>2 refurbish or repair that equipment?</p> <p>3 MR. WINE: Same objections.</p> <p>4 A. I have not.</p> <p>5 BY MR. BARR:</p> <p>6 Q. Have you found any evidence that during</p> <p>7 World War II or later in the 1940s any Ryan</p> <p>8 contracts with the government provided for the</p> <p>9 delivery of quantities of hazardous substances to</p> <p>10 the Harbor Drive Plant in excess of those needed for</p> <p>11 contract performance?</p> <p>12 MR. WINE: Same objections.</p> <p>13 A. I have found no evidence that they</p> <p>14 provided any hazardous materials to the contractor</p> <p>15 regardless of whether it's in excess of that needed</p> <p>16 or not.</p> <p>17 BY MR. BARR:</p> <p>18 Q. Okay. When you say -- let me scroll</p> <p>19 back. When you say "they," are you referring to --</p> <p>20 who are you referring to?</p> <p>21 A. The government provided no hazardous</p> <p>22 materials to the contractor for performance of any</p> <p style="text-align: right;">Page 84</p>
<p>1 or later in the 1940s of any contractual purpose</p> <p>2 other than Ryan's manufacture and delivery of end</p> <p>3 item military hardware products?</p> <p>4 MR. WINE: Objection, compound,</p> <p>5 vague and ambiguous, calls for a legal conclusion,</p> <p>6 goes to an ultimate issue.</p> <p>7 A. I have found no evidence that any of the</p> <p>8 contracts had any purpose other than the delivery of</p> <p>9 a specified product.</p> <p>10 BY MR. BARR:</p> <p>11 Q. Likewise, have you found any evidence of</p> <p>12 any government contracts with Ryan during World</p> <p>13 War II or later in the 1940s that called for the</p> <p>14 company to test any military-owned hardware that</p> <p>15 arrived at the plant containing any hazardous</p> <p>16 substances?</p> <p>17 MR. WINE: Same objections.</p> <p>18 A. I have not.</p> <p>19 BY MR. BARR:</p> <p>20 Q. Have you found any evidence that during</p> <p>21 World War II or later in the 1940s the government</p> <p>22 contracted to deliver any government-owned hardware</p> <p style="text-align: right;">Page 83</p>	<p>1 contracts awarded by the Department of Defense.</p> <p>2 MR. WINE: Object to the answer on</p> <p>3 the basis of foundation and assuming facts not in</p> <p>4 evidence.</p> <p>5 BY MR. BARR:</p> <p>6 Q. And have you found any evidence that</p> <p>7 during World War II or later the government owned or</p> <p>8 possessed any of the hazardous substances used by</p> <p>9 Ryan during its contract performance?</p> <p>10 MR. WINE: Same series of</p> <p>11 objections. Also relevance in light of the court's</p> <p>12 ruling on TDY's motion for partial summary judgment.</p> <p>13 A. I have found no such evidence.</p> <p>14 BY MR. BARR:</p> <p>15 Q. Have you found any evidence that during</p> <p>16 World War II or later in the 1940s the government</p> <p>17 made any decisions relating to the disposal of</p> <p>18 chemical waste generated at that plant?</p> <p>19 MR. WINE: Same objections.</p> <p>20 A. In the contractual documents that I</p> <p>21 reviewed, there is no such evidence.</p> <p>22 MR. WINE: Testimony also goes</p> <p style="text-align: right;">Page 85</p>

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<p>1 beyond the scope of the expert report. It is</p> <p>2 therefore inadmissible.</p> <p>3 BY MR. BARR:</p> <p>4 Q. Based on your knowledge of military</p> <p>5 contracts and your experience in the field, did any</p> <p>6 of the World War II contracts that you reviewed</p> <p>7 direct or mandate Ryan's chemical waste handling</p> <p>8 decisions, facilities or activities?</p> <p>9 MR. WINE: Same series of</p> <p>10 objections, as well as the witness is not qualified</p> <p>11 to give this opinion because it goes beyond his area</p> <p>12 of expertise as defined in his qualifications by</p> <p>13 counsel. Same objections.</p> <p>14 A. In the contractual documents I reviewed,</p> <p>15 there is no such evidence.</p> <p>16 BY MR. BARR:</p> <p>17 Q. The releases that we've marked as</p> <p>18 Exhibits 19, 20 and 21, are these, in your opinion,</p> <p>19 similar in form and content to those with which you</p> <p>20 were familiar during the course of your career?</p> <p>21 MR. WINE: Objection, foundation,</p> <p>22 assumes facts not in evidence.</p> <p style="text-align: right;">Page 86</p>	<p>1 references to --</p> <p>2 A. Pardon me. There was -- I reviewed one.</p> <p>3 There were references to two others. I believe that</p> <p>4 there were other facilities contracts that have not</p> <p>5 been identified.</p> <p>6 MR. WINE: Objection, assumes facts</p> <p>7 not in evidence.</p> <p>8 BY MR. BARR:</p> <p>9 Q. Let me direct your attention -- we're</p> <p>10 going to mark as Exhibits 22 through -- be five</p> <p>11 exhibits starting with 22. Actually it will be four</p> <p>12 exhibits.</p> <p>13 (Deposition Exhibit 22 marked.)</p> <p>14 (Deposition Exhibit 23 marked.)</p> <p>15 (Deposition Exhibit 24 marked.)</p> <p>16 MR. WINE: So we're marking</p> <p>17 Exhibits 22 through 24, three exhibits?</p> <p>18 MR. BARR: Yes. Correct. There's</p> <p>19 no 25 at the moment.</p> <p>20 BY MR. BARR:</p> <p>21 Q. Mr. Jordan, I am going to, for the sake</p> <p>22 of expediting things, put a tape flag on Exhibit 23</p> <p style="text-align: right;">Page 88</p>
<p>1 A. Yes, they are.</p> <p>2 BY MR. BARR:</p> <p>3 Q. I'd like to move ahead to a different</p> <p>4 time period of the 1950s through the 1970s. And</p> <p>5 we're going to talk about Air Force facilities</p> <p>6 contracts. Were you familiar with facilities</p> <p>7 contracts during the course of your career as a</p> <p>8 government contracting official?</p> <p>9 A. Yes, I --</p> <p>10 MR. WINE: Objection, leading, vague</p> <p>11 and ambiguous, assumes facts not in evidence.</p> <p>12 A. Yes, I was.</p> <p>13 BY MR. BARR:</p> <p>14 Q. And did you review any facilities</p> <p>15 contracts between Ryan or TRA and the military in</p> <p>16 this case?</p> <p>17 A. Yes, I did.</p> <p>18 Q. Mr. Jordan, how many facilities</p> <p>19 contracts between Ryan or TRA and the military did</p> <p>20 you review in this case?</p> <p>21 A. I believe there were three.</p> <p>22 Q. Did you review three or did you see</p> <p style="text-align: right;">Page 87</p>	<p>1 on the page with the Bates number ending in 565 as</p> <p>2 something I'd like you to focus on. And then I'll</p> <p>3 hand you the three exhibits that we've marked.</p> <p>4 (Witness Reviews Document.)</p> <p>5 A. Okay.</p> <p>6 BY MR. BARR:</p> <p>7 Q. Mr. Jordan, one of those documents, I</p> <p>8 believe the one where I put the taped flag on -- is</p> <p>9 that the facilities contract that you reviewed in</p> <p>10 this case?</p> <p>11 A. Yes, it is.</p> <p>12 Q. And let me direct your attention to the</p> <p>13 other documents that we handed you, the first one.</p> <p>14 Do you see there's a reference to two facilities</p> <p>15 contracts in there as one replacing the other?</p> <p>16 A. Yes.</p> <p>17 Q. What are the numbers of those two</p> <p>18 facilities contracts?</p> <p>19 MR. WINE: Objection, foundation,</p> <p>20 assumes facts not in evidence, lacks foundation.</p> <p>21 A. Under Exhibit No. 22 it says</p> <p>22 accountability terminated under contract number</p> <p style="text-align: right;">Page 89</p>

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<p>1 ending in 16731, transferred to contract numbers</p> <p>2 ending in 41665.</p> <p>3 BY MR. BARR:</p> <p>4 Q. Now, how do you know that those are both</p> <p>5 facilities contracts?</p> <p>6 MR. WINE: Objection, assumes facts</p> <p>7 not in evidence, foundation.</p> <p>8 A. They make specific reference to</p> <p>9 accountability. Then it says, "The attached</p> <p>10 tabulated list consists of nine (9) pages and lists</p> <p>11 one hundred eighty-six (186) stock-listed facility</p> <p>12 items transferred from Contract 16731 to Contract</p> <p>13 41665."</p> <p>14 MR. WINE: I'll also object to the</p> <p>15 extent the document is incomplete.</p> <p>16 A. In Exhibit No. 24 --</p> <p>17 BY MR. BARR:</p> <p>18 Q. Well, hang on. Let me -- let me get to</p> <p>19 that. What is -- what is the -- is there a</p> <p>20 facilities contract referenced in Exhibit 24?</p> <p>21 MR. WINE: Objection, assumes facts</p> <p>22 not in evidence. Same objections as before. Also</p> <p style="text-align: right;">Page 90</p>	<p>1 BY MR. BARR:</p> <p>2 Q. Not just yet.</p> <p>3 A. Okay.</p> <p>4 Q. Now, before I give you, Mr. Jordan,</p> <p>5 Exhibit 25, if I could direct your attention to the</p> <p>6 exhibit where I put a taped flag on one page.</p> <p>7 A. Okay.</p> <p>8 Q. Now, you indicated -- which exhibit</p> <p>9 number is this, again?</p> <p>10 A. No. 23.</p> <p>11 Q. Now, if you would look at that page</p> <p>12 where I put the taped flag, do you see there's a</p> <p>13 preface at the top?</p> <p>14 MR. WINE: Objection,</p> <p>15 mischaracterizes the document.</p> <p>16 A. There's a preamble.</p> <p>17 BY MR. BARR:</p> <p>18 Q. Oh, preamble. I beg your pardon. Does</p> <p>19 that document -- does that preamble refer to a prior</p> <p>20 facilities contract?</p> <p>21 MR. WINE: Objection, foundation,</p> <p>22 assumes facts not in evidence.</p> <p style="text-align: right;">Page 92</p>
<p>1 to the extent this series of questions goes beyond</p> <p>2 the scope of the expert report, it is objectionable</p> <p>3 as such.</p> <p>4 A. The subject of the letter dated 21</p> <p>5 December '73 is "Utilization of Government</p> <p>6 Equipment." And it says, "It is requested</p> <p>7 therefore" -- in paragraph 2 -- "that you furnish to</p> <p>8 this office a complete justification retention or an</p> <p>9 idle declaration (DD-1342) for the following items,"</p> <p>10 and it has a list of facility-type items.</p> <p>11 BY MR. BARR:</p> <p>12 Q. Is there a facilities contract number</p> <p>13 referenced in that document?</p> <p>14 MR. WINE: Same objections.</p> <p>15 A. Yes.</p> <p>16 BY MR. BARR:</p> <p>17 Q. What is the number?</p> <p>18 A. 72-C-1080.</p> <p>19 Q. Let's mark as Exhibit 25 a one-page</p> <p>20 document.</p> <p>21 (Deposition Exhibit 25 marked.)</p> <p>22 A. Are we through with twenty --</p> <p style="text-align: right;">Page 91</p>	<p>1 A. Yes, it does.</p> <p>2 BY MR. BARR:</p> <p>3 Q. And how do you know that?</p> <p>4 A. "The parties hereto have entered into</p> <p>5 Contract" -- numbers ending in 41665 -- "whereunder</p> <p>6 certain facilities have been provided to the</p> <p>7 Contractor by the Government for the Target Drone</p> <p>8 and XC-142 programs.</p> <p>9 "The use authorization in said</p> <p>10 contract expires 2 June 1967, and it is desired</p> <p>11 hereunder to continue to provide said facilities for</p> <p>12 the purpose stated above."</p> <p>13 So it's a continuation of</p> <p>14 authorization to use those facilities under this</p> <p>15 contract ending in 1645.</p> <p>16 MR. WINE: Object to the extent the</p> <p>17 witness has characterized the document without</p> <p>18 proper foundation and providing a legal conclusion</p> <p>19 as to the meaning of the document.</p> <p>20 BY MR. BARR:</p> <p>21 Q. Mr. Jordan, what is a facilities</p> <p>22 contract? Is that -- is that something different</p> <p style="text-align: right;">Page 93</p>

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<p>1 from a supply contract?</p> <p>2 A. A facilities contract is a term of art</p> <p>3 that we use for those contractual documents that</p> <p>4 authorize the contractor to use certain items that</p> <p>5 are identified as facilities-type items.</p> <p>6 Q. And what is meant by "facilities"? Is</p> <p>7 that a term of art?</p> <p>8 A. It is -- it is a term of art that</p> <p>9 basically implies that there are pieces of</p> <p>10 equipment, such as large machine tools and/or real</p> <p>11 estate, real property. Primarily, in my experience,</p> <p>12 they were limited to identified production</p> <p>13 tooling -- or not tooling, but production equipment.</p> <p>14 MR. WINE: I'll object to the series</p> <p>15 of questions calling for a legal conclusion as to</p> <p>16 the meaning of the term "facilities contract" and</p> <p>17 its legal implications.</p> <p>18 BY MR. BARR:</p> <p>19 Q. Let me show you what we've marked as</p> <p>20 Exhibit 25. I'll ask if you've reviewed that as</p> <p>21 well?</p> <p>22 A. Yes, I have.</p> <p style="text-align: right;">Page 94</p>	<p>1 MR. WINE: Objection, leading.</p> <p>2 A. It says, "Subject: Worthington Air</p> <p>3 Compressor," contract ID number so and so, contract</p> <p>4 ending in numbers 1080.</p> <p>5 BY MR. BARR:</p> <p>6 Q. How is the -- when you say it's a --</p> <p>7 there's a piece of equipment. How is it -- how is</p> <p>8 that equipment identified?</p> <p>9 MR. WINE: Same objections.</p> <p>10 A. It's identified by a specific government</p> <p>11 identification number.</p> <p>12 BY MR. BARR:</p> <p>13 Q. And how do you know it's a government</p> <p>14 identification number?</p> <p>15 A. It says "Government ID #261202."</p> <p>16 Q. Okay. Let me borrow that Exhibit 25</p> <p>17 back from you just one moment. Now, you have a --</p> <p>18 if you would turn, please, to the facilities</p> <p>19 contract that we do have --</p> <p>20 MR. WINE: Objection, assumes facts</p> <p>21 not in evidence.</p> <p>22 BY MR. BARR:</p> <p style="text-align: right;">Page 96</p>
<p>1 Q. Does that, in your understanding, refer</p> <p>2 to a facilities contract?</p> <p>3 MR. WINE: Objection, foundation,</p> <p>4 assumes facts not in evidence, calls for hearsay</p> <p>5 testimony.</p> <p>6 A. Yes, it does.</p> <p>7 BY MR. BARR:</p> <p>8 Q. And what's the basis of your conclusion?</p> <p>9 MR. WINE: Same objections.</p> <p>10 A. It identifies a specific piece of</p> <p>11 equipment manufactured by a company called</p> <p>12 Worthington.</p> <p>13 BY MR. BARR:</p> <p>14 Q. And how does it identify it?</p> <p>15 MR. WINE: Same objections.</p> <p>16 A. "Subject item has been physically</p> <p>17 checked and was in fact manufactured by Worthington</p> <p>18 Corp. Therefore, the Facilities Tab Run should be</p> <p>19 corrected accordingly."</p> <p>20 BY MR. BARR:</p> <p>21 Q. What about -- let me direct your</p> <p>22 attention to the subject line.</p> <p style="text-align: right;">Page 95</p>	<p>1 Q. -- that is Exhibit 23 --</p> <p>2 A. Yes.</p> <p>3 Q. -- is that, in fact, based on your</p> <p>4 experience and training a facilities contract?</p> <p>5 MR. WINE: Same objections.</p> <p>6 A. Yes, it is.</p> <p>7 BY MR. BARR:</p> <p>8 Q. Let me direct your attention to the page</p> <p>9 with the Bates number 575.</p> <p>10 A. Okay.</p> <p>11 Q. Is there a clause there that pertains to</p> <p>12 indemnification?</p> <p>13 MR. WINE: Objection, leading,</p> <p>14 foundation.</p> <p>15 A. Clause No. 20, indemnification of the</p> <p>16 government.</p> <p>17 BY MR. BARR:</p> <p>18 Q. Now, with respect to the indemnification</p> <p>19 provisions, were you familiar in the ASPRs as to</p> <p>20 whether such provisions were required?</p> <p>21 MR. WINE: Objection, calls for a</p> <p>22 legal conclusion.</p> <p style="text-align: right;">Page 97</p>

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<p>1 A. Yes, they were.</p> <p>2 BY MR. BARR:</p> <p>3 Q. Let's mark a series of excerpts from the</p> <p>4 ASPRs. We'll start with Exhibit 26.</p> <p>5 (Deposition Exhibit 26 marked.)</p> <p>6 (Deposition Exhibit 27 marked.)</p> <p>7 (Deposition Exhibit 28 marked.)</p> <p>8 (Deposition Exhibit 29 marked.)</p> <p>9 (Deposition Exhibit 30 marked.)</p> <p>10 (Deposition Exhibit 31 marked.)</p> <p>11 (Deposition Exhibit 32 marked.)</p> <p>12 (Deposition Exhibit 33 marked.)</p> <p>13 MR. WINE: 26 through 33?</p> <p>14 MR. BARR: Correct.</p> <p>15 (Witness Reviews Documents.)</p> <p>16 A. Okay.</p> <p>17 BY MR. BARR:</p> <p>18 Q. Mr. Jordan, with respect to -- just</p> <p>19 focusing on indemnification for the moment, do these</p> <p>20 ASPR provisions over the years relate to</p> <p>21 indemnification provisions?</p> <p>22 MR. WINE: Objection, foundation.</p> <p style="text-align: right;">Page 98</p>	<p>1 A. Yes, I did.</p> <p>2 BY MR. BARR:</p> <p>3 Q. Did you form an opinion as to the</p> <p>4 consistency or whether they changed over a period of</p> <p>5 time?</p> <p>6 MR. WINE: Same objection. Also</p> <p>7 calls for a legal conclusion.</p> <p>8 A. It is my opinion that they remained</p> <p>9 remarkably consistent through time, and I don't</p> <p>10 recall any substantive changes from the initial</p> <p>11 publication of the ASPR in 1948 through the latest</p> <p>12 edition that I reviewed.</p> <p>13 BY MR. BARR:</p> <p>14 Q. Now, have you also reviewed facilities</p> <p>15 contracts between the Air Force and other defense</p> <p>16 contractors in this matter?</p> <p>17 MR. WINE: Objection, vague and</p> <p>18 ambiguous, relevance.</p> <p>19 A. Yes, I have.</p> <p>20 BY MR. BARR:</p> <p>21 Q. Staring with Exhibit 34, we'll mark four</p> <p>22 exhibits.</p> <p style="text-align: right;">Page 100</p>
<p>1 Documents Bates -- marked Exhibits 26 through 33 are</p> <p>2 excerpts from ASPRs from a variety of years skipping</p> <p>3 years. So, for example, Jordan 26 is from 1948 and</p> <p>4 then it goes to '52 in Exhibit 27; Exhibit 28 is</p> <p>5 '55; Exhibit 29 is '58; Exhibit 30 is '63;</p> <p>6 Exhibit 31 is '73; Exhibit 32 is '74; Exhibit 33 is</p> <p>7 '76. And the documents are incomplete. Also calls</p> <p>8 for a legal conclusion.</p> <p>9 BY MR. BARR:</p> <p>10 Q. Mr. Jordan, do each of these exhibits</p> <p>11 contain provisions relating to indemnification under</p> <p>12 facilities contracts?</p> <p>13 A. Yes, they do.</p> <p>14 MR. WINE: Also object to the extent</p> <p>15 that the documents go beyond the scope of those</p> <p>16 documents referenced in the expert report and</p> <p>17 therefore outside the scope.</p> <p>18 BY MR. BARR:</p> <p>19 Q. Mr. Jordan, did you review each of the</p> <p>20 indemnification provisions in those excerpts from</p> <p>21 the ASPRs?</p> <p>22 MR. WINE: Same objections.</p> <p style="text-align: right;">Page 99</p>	<p>1 (Deposition Exhibit 34 marked.)</p> <p>2 (Deposition Exhibit 35 marked.)</p> <p>3 (Deposition Exhibit 36 marked.)</p> <p>4 (Deposition Exhibit 37 marked.)</p> <p>5 BY MR. BARR:</p> <p>6 Q. Mr. Jordan, I'll hand those to you. If</p> <p>7 you could briefly review those, and I'll ask you if</p> <p>8 you've reviewed those in connection with your work</p> <p>9 in this case?</p> <p>10 MR. WINE: While the witness is</p> <p>11 reviewing, I'll object on the basis of relevance,</p> <p>12 foundation and hearsay.</p> <p>13 (Witness Reviews Documents.)</p> <p>14 A. Yes, I have reviewed these contracts.</p> <p>15 BY MR. BARR:</p> <p>16 Q. Do these contain indemnification</p> <p>17 provisions?</p> <p>18 MR. WINE: Objection.</p> <p>19 A. Yes, they do.</p> <p>20 BY MR. BARR:</p> <p>21 Q. In your opinion, are these</p> <p>22 indemnification provisions similar or the same or</p> <p style="text-align: right;">Page 101</p>

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<p>1 different from the indemnification provision you saw</p> <p>2 in the facilities contract between Ryan and the</p> <p>3 government?</p> <p>4 MR. WINE: Same objections. Also</p> <p>5 calls for a legal conclusion.</p> <p>6 A. Yes, they are.</p> <p>7 MR. WINE: They're also beyond the</p> <p>8 scope of the expert report insofar as they weren't</p> <p>9 referenced in the expert report and therefore</p> <p>10 inadmissible.</p> <p>11 BY MR. BARR:</p> <p>12 Q. When you say, "yes, they are," are they</p> <p>13 similar, the same or different?</p> <p>14 MR. WINE: Same objections.</p> <p>15 A. Best of my recollection, they are the</p> <p>16 same.</p> <p>17 BY MR. BARR:</p> <p>18 Q. Now, are you familiar with TDY's</p> <p>19 argument in this case that government personnel</p> <p>20 engaged in a course of dealing and administering</p> <p>21 1980s and 1990s supply contracts that waived</p> <p>22 indemnification provisions in the facilities</p> <p style="text-align: right;">Page 102</p>	<p>1 question inherently calls for a legal conclusion and</p> <p>2 therefore is improper. Also goes beyond the scope</p> <p>3 of the expert witness' report.</p> <p>4 A. Yes, I have.</p> <p>5 BY MR. BARR:</p> <p>6 Q. Have you found any facts to support that</p> <p>7 course of dealing argument?</p> <p>8 MR. WINE: Same objections.</p> <p>9 A. I have found no such facts.</p> <p>10 BY MR. BARR:</p> <p>11 Q. Could you explain your answer?</p> <p>12 MR. WINE: Same objections.</p> <p>13 A. I know of nothing in regulation that</p> <p>14 gives any government employee, such as the</p> <p>15 administrative contracting officer or the DCAA</p> <p>16 auditors, the authority to waive provisions in prior</p> <p>17 contracts such as that existed earlier in the period</p> <p>18 prior to the -- this period that you were talking</p> <p>19 about in the '80s and '90s.</p> <p>20 BY MR. BARR:</p> <p>21 Q. Are you --</p> <p>22 A. There simply is no authority for them to</p> <p style="text-align: right;">Page 104</p>
<p>1 contracts --</p> <p>2 MR. WINE: Objection, insofar as it</p> <p>3 mischaracterizes --</p> <p>4 MR. BARR: Excuse me.</p> <p>5 MR. WINE: -- the position of TDY.</p> <p>6 BY MR. BARR:</p> <p>7 Q. Are you familiar with TDY's argument in</p> <p>8 this case that government personnel engaged in the</p> <p>9 course of dealing and administering 1980s and 1990s</p> <p>10 supply contracts that waived indemnification</p> <p>11 provisions in the facilities contracts between Ryan</p> <p>12 at TRA and the Air Force?</p> <p>13 A. Yes, I am --</p> <p>14 MR. WINE: Objection insofar as it</p> <p>15 mischaracterizes the position of TDY.</p> <p>16 BY MR. BARR:</p> <p>17 Q. Without offering legal opinions and</p> <p>18 based on your experience on your review of documents</p> <p>19 and testimony in this case, have you formed an</p> <p>20 opinion as to whether there are any facts relevant</p> <p>21 to this course of dealing argument?</p> <p>22 MR. WINE: Objection insofar as the</p> <p style="text-align: right;">Page 103</p>	<p>1 waive those privileges.</p> <p>2 MR. WINE: Now, objection and move</p> <p>3 to strike the answer because the response provides a</p> <p>4 legal analysis that was premised -- that goes to the</p> <p>5 heart of the objection that was made to the question</p> <p>6 propounded.</p> <p>7 MR. BARR: Of course we'll oppose</p> <p>8 your motion.</p> <p>9 BY MR. BARR:</p> <p>10 Q. Now, in terms of authority, the answer</p> <p>11 regarding authority that you just gave, or lack of</p> <p>12 authority, is that based on your experience and</p> <p>13 training?</p> <p>14 A. Based on my --</p> <p>15 MR. WINE: Objection, calls for a</p> <p>16 legal conclusion.</p> <p>17 A. Based on my experience and training, my</p> <p>18 review of the regulations and the review of the</p> <p>19 position descriptions for contracting officers, and</p> <p>20 there's nothing in those documents that I referenced</p> <p>21 that gives an administrative contracting officer</p> <p>22 such authority.</p> <p style="text-align: right;">Page 105</p>

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<p>1 BY MR. BARR:</p> <p>2 Q. Now, have you found any evidence that</p> <p>3 any 1980s or 1990s government contracting officers</p> <p>4 or cost auditors were aware of the provisions of the</p> <p>5 facilities contracts that had existed up until</p> <p>6 1970s?</p> <p>7 MR. WINE: Same objections and</p> <p>8 assumes facts not in evidence. And also goes beyond</p> <p>9 the scope of the witness' expert report and is</p> <p>10 therefore inadmissible.</p> <p>11 A. I have seen no such evidence that they</p> <p>12 were aware of those waiver provisions and releases.</p> <p>13 BY MR. BARR:</p> <p>14 Q. When you say "waiver provisions," did</p> <p>15 you mean to say indemnification provision?</p> <p>16 A. Yes.</p> <p>17 MR. WINE: Objection, leading,</p> <p>18 mischaracterizes the witness' testimony.</p> <p>19 BY MR. BARR:</p> <p>20 Q. Did you misspeak, Mr. Jordan?</p> <p>21 A. Yes, I misspoke.</p> <p>22 MR. WINE: Do you need a break?</p> <p style="text-align: right;">Page 106</p>	<p>1 (Deposition Exhibit 40 marked.)</p> <p>2 (Deposition Exhibit 41 marked.)</p> <p>3 BY MR. BARR:</p> <p>4 Q. Mr. Jordan, one quick question. Were</p> <p>5 releases, as you have described them, used in all</p> <p>6 kinds of government contracts or just certain</p> <p>7 specific kinds?</p> <p>8 MR. WINE: Objection, vague and</p> <p>9 ambiguous.</p> <p>10 MR. BARR: I'm not sure the witness</p> <p>11 heard my question.</p> <p>12 BY MR. BARR:</p> <p>13 Q. Mr. Jordan --</p> <p>14 A. Yes.</p> <p>15 Q. -- were -- were releases, of the kind we</p> <p>16 were discussing earlier and as you've described them</p> <p>17 in this deposition, used in all kinds of government</p> <p>18 contracts or certain kinds only?</p> <p>19 MR. WINE: Same objection.</p> <p>20 A. Best of my knowledge, in all types of</p> <p>21 contracts.</p> <p>22 BY MR. BARR:</p> <p style="text-align: right;">Page 108</p>
<p>1 MR. BARR: I'll let you know when</p> <p>2 we'll take a break.</p> <p>3 MR. WINE: No, I was just asking the</p> <p>4 witness.</p> <p>5 THE WITNESS: I'm fine.</p> <p>6 BY MR. BARR:</p> <p>7 Q. Did you, in the course of your work on</p> <p>8 this case, find any evidence that TRA and the</p> <p>9 government discussed facilities contract</p> <p>10 indemnification provisions --</p> <p>11 MR. WINE: Same --</p> <p>12 BY MR. BARR:</p> <p>13 Q. -- in the context of government payment</p> <p>14 of any costs of TRA?</p> <p>15 MR. WINE: Same objections. Assumes</p> <p>16 facts not in evidence.</p> <p>17 A. I found no such evidence.</p> <p>18 BY MR. BARR:</p> <p>19 Q. All right. Let's look at another group</p> <p>20 of exhibits starting with Exhibit 38.</p> <p>21 (Deposition Exhibit 38 marked.)</p> <p>22 (Deposition Exhibit 39 marked.)</p> <p style="text-align: right;">Page 107</p>	<p>1 Q. Were they used in fixed price or cost</p> <p>2 reimbursement or both?</p> <p>3 A. Both.</p> <p>4 MR. WINE: Same objections.</p> <p>5 BY MR. BARR:</p> <p>6 Q. The exhibits that we've marked as 38</p> <p>7 through 41, have you reviewed these releases before?</p> <p>8 A. I believe I have, yes.</p> <p>9 Q. Have you reviewed -- well, have you</p> <p>10 formed an opinion as to whether similar releases</p> <p>11 were executed by Ryan and TRA in connection with</p> <p>12 other contracts?</p> <p>13 MR. WINE: Objection, assumes facts</p> <p>14 not in evidence, calls for a legal conclusion beyond</p> <p>15 the scope of the witness' expertise.</p> <p>16 A. Inasmuch as the releases are required by</p> <p>17 government regulation, ASPRs, and inasmuch as there</p> <p>18 has been a remarkable consistency in those</p> <p>19 regulations through the years, it is my opinion that</p> <p>20 the releases were executed on all contracts during</p> <p>21 that relevant period regardless of whether or not we</p> <p>22 have a copy of the release or not.</p> <p style="text-align: right;">Page 109</p>

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<p>1 MR. WINE: Also going to object to</p> <p>2 the extent that the witness is giving testimony that</p> <p>3 goes beyond the information conveyed in his expert</p> <p>4 report. It is inadmissible as such.</p> <p>5 MR. BARR: Go off the record.</p> <p>6 THE VIDEOGRAPHER: Going off record.</p> <p>7 Time now is 3:29.</p> <p>8 (Recess Taken From 3:29 p.m. To</p> <p>9 3:29 p.m.)</p> <p>10 THE VIDEOGRAPHER: Going back on</p> <p>11 record. Time now is 3:29.</p> <p>12 MR. WINE: For the purpose of the</p> <p>13 record, the document that's been marked Jordan</p> <p>14 Exhibit 39 appears to be an excerpt from a larger</p> <p>15 document referenced in the expert report that was</p> <p>16 Bates labeled US0114285 through 2981 and as such is</p> <p>17 an incomplete document.</p> <p>18 BY MR. BARR:</p> <p>19 Q. All right. Let's look at some</p> <p>20 additional excerpts from the ASPRs. By the way,</p> <p>21 Mr. Jordan, the ASPRs, how voluminous would you say</p> <p>22 these -- those documents were?</p> <p style="text-align: right;">Page 110</p>	<p>1 (Deposition Exhibit 49 marked.)</p> <p>2 (Deposition Exhibit 50 marked.)</p> <p>3 (Deposition Exhibit 51 marked.)</p> <p>4 (Witness Reviews Documents.)</p> <p>5 A. Okay.</p> <p>6 BY MR. BARR:</p> <p>7 Q. Mr. Jordan, have you reviewed what we've</p> <p>8 marked as Exhibits 42 through 51 just now?</p> <p>9 MR. WINE: TDY asserts the same</p> <p>10 objections that it asserted with respect to Jordan</p> <p>11 Exhibits 26 through 33.</p> <p>12 MR. BARR: Okay.</p> <p>13 BY MR. BARR:</p> <p>14 Q. Mr. Jordan, have you reviewed those</p> <p>15 exhibits?</p> <p>16 A. Yes.</p> <p>17 Q. Had you reviewed those exhibits</p> <p>18 previously in this matter?</p> <p>19 A. Yes.</p> <p>20 Q. Do these excerpts from the ASPRs pertain</p> <p>21 to releases?</p> <p>22 MR. WINE: Objection, leading.</p> <p style="text-align: right;">Page 112</p>
<p>1 A. Including all the appendix, several feet</p> <p>2 of documents.</p> <p>3 Q. Let's mark as some additional</p> <p>4 excerpts -- we'll start with Exhibit 42.</p> <p>5 MR. WINE: These are different than</p> <p>6 the ASPR excerpts that we previously marked?</p> <p>7 MR. BARR: Correct.</p> <p>8 (Deposition Exhibit 42 marked.)</p> <p>9 (Deposition Exhibit 43 marked.)</p> <p>10 (Deposition Exhibit 44 marked.)</p> <p>11 (Deposition Exhibit 45 marked.)</p> <p>12 (Deposition Exhibit 46 marked.)</p> <p>13 (Deposition Exhibit 47 marked.)</p> <p>14 MR. BARR: Hang on just one second.</p> <p>15 Off the record.</p> <p>16 THE VIDEOGRAPHER: Going off record.</p> <p>17 Time now is 3:32.</p> <p>18 (Recess Taken From 3:32 p.m. To</p> <p>19 3:35 p.m.)</p> <p>20 THE VIDEOGRAPHER: Going back on</p> <p>21 record. Time now is 3:35.</p> <p>22 (Deposition Exhibit 48 marked.)</p> <p style="text-align: right;">Page 111</p>	<p>1 A. Yes, they do.</p> <p>2 BY MR. BARR:</p> <p>3 Q. Do these excerpts from the ASPRs pertain</p> <p>4 to a particular type of contract?</p> <p>5 MR. WINE: Same objection.</p> <p>6 A. These releases pertain to</p> <p>7 fixed-price-type contracts -- pardon me, cost-type</p> <p>8 contracts, not fixed price.</p> <p>9 BY MR. BARR:</p> <p>10 Q. Did you misspeak earlier when you</p> <p>11 referred to releases pertaining to fixed-price</p> <p>12 contracts?</p> <p>13 MR. WINE: Objection.</p> <p>14 A. I may have.</p> <p>15 BY MR. BARR:</p> <p>16 Q. In reviewing these ASPR provisions over</p> <p>17 the period of time that they cover, have you formed</p> <p>18 an opinion as to whether they are consistent or</p> <p>19 changed in material ways over time?</p> <p>20 MR. WINE: Objection, calls for a</p> <p>21 legal conclusion, goes beyond the scope of the</p> <p>22 witness' expertise.</p> <p style="text-align: right;">Page 113</p>

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<p>1 A. Based upon a reading of the regulations, 2 they appear to be remarkably consistent over time. 3 BY MR. BARR: 4 Q. Did the -- with respect to the releases 5 that are described, are the releases that are 6 described mandatory or other than mandatory? 7 MR. WINE: Objection, assumes facts 8 not in evidence, calls for a legal conclusion, vague 9 and ambiguous. Also goes beyond the scope of the 10 witness' expert report. 11 A. The regulations say they are required so 12 that would make them mandatory. 13 BY MR. BARR: 14 Q. Did these requirements -- the 15 requirement for releases continue in effect when the 16 FARs came into being? 17 MR. WINE: Same objection, assumes 18 facts not in evidence. 19 A. Yes, they did. 20 BY MR. BARR: 21 Q. And is that based on your knowledge and 22 experience?</p> <p style="text-align: right;">Page 114</p>	<p>1 A. I have not seen any such evidence. 2 MR. BARR: Let's take a break now. 3 THE VIDEOGRAPHER: Going off record. 4 Time now is 3:40. 5 (Recess Taken From 3:40 p.m. To 6 3:53 p.m.) 7 THE VIDEOGRAPHER: Going back on 8 record. Time now is 3:53. 9 BY MR. BARR: 10 Q. All right. Mr. Jordan, let's turn to 11 novation agreements. 12 A. Okay. 13 Q. In your experience as a government 14 contracting official, did you deal with novation 15 agreements from time to time? 16 A. Yes, I did. 17 Q. What is a novation agreement? 18 MR. WINE: Objection, calls for a 19 legal conclusion. 20 A. A novation agreement is an agreement 21 between a contractor and the government relative to 22 either sale of a corporation from one entity to</p> <p style="text-align: right;">Page 116</p>
<p>1 MR. WINE: Same objection. 2 A. Knowledge and experience and in reading 3 of the regulations. 4 BY MR. BARR: 5 Q. In the course of your work on this case, 6 have you found any evidence -- well, let me -- let 7 me back up a second. 8 As a foundational question, is it 9 true that one of the provisions calls for a contract 10 to provide written notice in certain respects under 11 these release forms? 12 MR. WINE: Objection, assumes facts 13 not in evidence, hearsay, calls for a legal 14 conclusion and goes beyond the scope of the witness' 15 expert report, and it's leading. 16 A. Yes, they did. 17 BY MR. BARR: 18 Q. Have you found any evidence in this case 19 that Ryan or TRA provided any written notice to a 20 government contracting officer regarding the kinds 21 of claims that TDY makes in this case? 22 MR. WINE: Same objections.</p> <p style="text-align: right;">Page 115</p>	<p>1 another or a change of name. 2 BY MR. BARR: 3 Q. Does it -- does a novation agreement 4 accomplish other things? 5 MR. WINE: Objection, vague and 6 ambiguous, calls for a legal conclusion. 7 A. Novation agreements transfers 8 accountability from one corporate entity to another. 9 And in the case of the two novation agreements that 10 we are aware of -- or I am aware of relative to Ryan 11 or TDY, they specifically include language relative 12 to waiver of claims against the government arising 13 from performance under contracts that had been 14 issued prior to the date of those novation 15 agreements. 16 MR. WINE: Object to the response as 17 providing a legal analysis and conclusion that goes 18 beyond the scope of the witness' expertise and goes 19 beyond the scope of his expert report. 20 BY MR. BARR: 21 Q. Did the novation agreements that you 22 reviewed -- that you came in -- that you had</p> <p style="text-align: right;">Page 117</p>

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<p>1 experience with as a government contracting</p> <p>2 official, did they accomplish similar objectives?</p> <p>3 MR. WINE: Same objections. Also</p> <p>4 vague and ambiguous as to which period of time</p> <p>5 counsel is referring to.</p> <p>6 A. To the best of my knowledge, yes, it</p> <p>7 did.</p> <p>8 BY MR. BARR:</p> <p>9 Q. And you understand that I'm referring to</p> <p>10 the period of time in which you were a government</p> <p>11 contracting official.</p> <p>12 A. Yes.</p> <p>13 Q. This will be Exhibits 52, 53 and 54.</p> <p>14 (Deposition Exhibit 52 marked.)</p> <p>15 (Deposition Exhibit 53 marked.)</p> <p>16 MR. BARR: I may have misspoken. It</p> <p>17 may just be two, 52 and 53.</p> <p>18 MR. WINE: Is this another document?</p> <p>19 This will be 54. You've given me three documents.</p> <p>20 52, 53 and this would be 54.</p> <p>21 MR. BARR: Maybe I better look at</p> <p>22 them again.</p> <p style="text-align: right;">Page 118</p>	<p>1 A. Yes, they are.</p> <p>2 Q. Now, let me go back to a part of</p> <p>3 deposition that you gave almost two years to the</p> <p>4 day, and in response to some questions from</p> <p>5 Mr. Wine, I would like to follow up on a couple of</p> <p>6 those. Mr. Wine used the term whether it was</p> <p>7 gratuitous for the government to have agreed to pay</p> <p>8 a million dollars under a 1996 advance agreement.</p> <p>9 Do you recall that question?</p> <p>10 A. Yes, I do.</p> <p>11 MR. WINE: Objection, assumes facts</p> <p>12 not in evidence.</p> <p>13 A. Yes, I do.</p> <p>14 BY MR. BARR:</p> <p>15 Q. Is gratuity a government contracting</p> <p>16 term that you have ever used?</p> <p>17 MR. WINE: Objection, assumes facts</p> <p>18 not in question. Mischaracterizes counsel's</p> <p>19 question.</p> <p>20 A. Gratuity is a term that we used only in</p> <p>21 relation to the clause that was required to be</p> <p>22 included in all contracts called a covenant against</p> <p style="text-align: right;">Page 120</p>
<p>1 MR. WINE: All of them?</p> <p>2 MR. BARR: Yes, please. And does</p> <p>3 the reporter also have three? Okay. I was right</p> <p>4 the first time.</p> <p>5 (Deposition Exhibit 54 marked.)</p> <p>6 (Witness Reviews Documents.)</p> <p>7 A. Okay.</p> <p>8 BY MR. BARR:</p> <p>9 Q. Mr. Jordan, are these the novation</p> <p>10 agreement documents that you reviewed in connection</p> <p>11 with your work in this case?</p> <p>12 MR. WINE: Objection, assumes facts</p> <p>13 not in evidence, foundation, and to the extent the</p> <p>14 exhibits in their entirety do not -- are not</p> <p>15 referenced in the expert report, goes beyond the</p> <p>16 scope of the witness' expert report and opinions.</p> <p>17 A. Yes, they are.</p> <p>18 BY MR. BARR:</p> <p>19 Q. Now, are these documents consistent with</p> <p>20 your understanding and experience that you gained as</p> <p>21 a government contracting official with respect to</p> <p>22 other novation agreements?</p> <p style="text-align: right;">Page 119</p>	<p>1 gratuities, and it pertained to anything of value</p> <p>2 offered to a government employee and it was a</p> <p>3 prohibition against accepting those kinds of gifts</p> <p>4 and gratuities.</p> <p>5 BY MR. BARR:</p> <p>6 Q. From whom?</p> <p>7 A. From anyone.</p> <p>8 Q. Now, have you found any evidence that</p> <p>9 the contracting officer involved in the 1996</p> <p>10 agreement was aware of any releases or facilities</p> <p>11 contract indemnification provisions or novations --</p> <p>12 MR. WINE: Objection, foundation,</p> <p>13 assumes facts not in evidence, calls for a legal</p> <p>14 conclusion.</p> <p>15 A. I have seen --</p> <p>16 BY MR. BARR:</p> <p>17 Q. And -- excuse me. To finish my</p> <p>18 question, any such documents in the context of --</p> <p>19 that were executed by Ryan or TRA?</p> <p>20 MR. WINE: Same objections. Also</p> <p>21 calls for hearsay.</p> <p>22 A. I have seen no such evidence.</p> <p style="text-align: right;">Page 121</p>

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<p>1 BY MR. BARR:</p> <p>2 Q. Okay. Let's move to the subject of the</p> <p>3 1950s through the 1990s and the prime contracts</p> <p>4 between Ryan and TRA and the government.</p> <p>5 A. Okay.</p> <p>6 Q. I'll mark a substantial number of</p> <p>7 documents and we'll try to do these in one large</p> <p>8 group.</p> <p>9 MR. WINE: Starting at 55?</p> <p>10 MR. BARR: I believe that is right.</p> <p>11 (Deposition Exhibit 55 marked.)</p> <p>12 (Deposition Exhibit 56 marked.)</p> <p>13 (Deposition Exhibit 57 marked.)</p> <p>14 (Deposition Exhibit 58 marked.)</p> <p>15 (Deposition Exhibit 59 marked.)</p> <p>16 (Deposition Exhibit 60 marked.)</p> <p>17 (Deposition Exhibit 61 marked.)</p> <p>18 (Deposition Exhibit 62 marked.)</p> <p>19 (Deposition Exhibit 63 marked.)</p> <p>20 (Deposition Exhibit 64 marked.)</p> <p>21 (Deposition Exhibit 65 marked.)</p> <p>22 BY MR. BARR:</p> <p style="text-align: right;">Page 122</p>	<p>1 referenced in his report or not.</p> <p>2 MR. WINE: Okay. And in the absence</p> <p>3 of a stipulation from the government that all of</p> <p>4 these documents have been referenced in the expert</p> <p>5 report, we reserve our right to the extent that any</p> <p>6 one or more documents was not referenced in the</p> <p>7 report as the basis of an opinion. We move for its</p> <p>8 exclusion.</p> <p>9 MR. BARR: Thank you. And we oppose</p> <p>10 that motion, as with your other motions.</p> <p>11 MR. WINE: Also to the extent that</p> <p>12 the documents are incomplete, lack of foundation.</p> <p>13 We'll preserve our objections as we have with the</p> <p>14 prior exhibits offered en masse.</p> <p>15 A. Best of my recollection, these are</p> <p>16 contracts that I have reviewed.</p> <p>17 BY MR. BARR:</p> <p>18 Q. Now, do these include fixed-price as</p> <p>19 well as cost-reimbursement contracts?</p> <p>20 MR. WINE: Objection, calls for a</p> <p>21 legal conclusion, leading.</p> <p>22 A. As well as basic ordering agreements.</p> <p style="text-align: right;">Page 124</p>
<p>1 Q. Now, Mr. Jordan, you'll be pleased to</p> <p>2 know that I won't have a whole lot of questions on</p> <p>3 these per se at the moment, but I would ask that you</p> <p>4 review these documents and tell me if you've</p> <p>5 reviewed each of them in connection with your work</p> <p>6 on this case.</p> <p>7 MR. WINE: To the extent that one of</p> <p>8 the 11 documents marked as Exhibits 55 through 65</p> <p>9 includes one or more documents that are not</p> <p>10 referenced in the witness' expert report, we would</p> <p>11 object as being beyond the scope of the witness'</p> <p>12 expert report and therefore move for their</p> <p>13 exclusion.</p> <p>14 MR. BARR: Oppose.</p> <p>15 MR. WINE: Is the government willing</p> <p>16 to stipulate that all of these documents are</p> <p>17 referenced in his report?</p> <p>18 MR. BARR: I don't -- we don't need</p> <p>19 to enter into any stipulation.</p> <p>20 MR. WINE: I'm just trying to --</p> <p>21 MR. BARR: Our position is it</p> <p>22 doesn't matter whether this is specifically</p> <p style="text-align: right;">Page 123</p>	<p>1 BY MR. BARR:</p> <p>2 Q. What is a --</p> <p>3 THE REPORTER: I didn't hear that.</p> <p>4 THE WITNESS: As well as basic</p> <p>5 ordering agreements.</p> <p>6 BY MR. BARR:</p> <p>7 Q. Ordering?</p> <p>8 A. Ordering.</p> <p>9 Q. What is a basic ordering agreement?</p> <p>10 A. A basic ordering agreement is an</p> <p>11 agreement between the government and a contractor</p> <p>12 relative to the standard as we called it boilerplate</p> <p>13 terms and conditions. And by preagreeing to those</p> <p>14 standard terms and conditions, the government and</p> <p>15 the contractor could agree on specific orders that</p> <p>16 could be issued against that basic ordering</p> <p>17 agreement for a specifically identified product or</p> <p>18 service. And then by having all of the basic terms</p> <p>19 and conditions preagreed to, it made the issuance of</p> <p>20 the order much simpler and all you had to do was</p> <p>21 negotiate price and delivery and anything that was</p> <p>22 peculiar to the individual order, such as progress</p> <p style="text-align: right;">Page 125</p>

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<p>1 payments.</p> <p>2 Q. Now, focusing on the 1950s through the</p> <p>3 1990s, Mr. Jordan, did you determine in your review</p> <p>4 of the documents and testimony in this case whether</p> <p>5 or not during that time period the government</p> <p>6 contracted to deliver any government-owned military</p> <p>7 hardware containing any hazardous substances to the</p> <p>8 Harbor Drive Plant in order for Ryan or TRA to</p> <p>9 refurbish or repair that hardware?</p> <p>10 MR. WINE: Objection, foundation,</p> <p>11 assumes facts not in evidence, calls for a legal</p> <p>12 conclusion.</p> <p>13 A. I saw no such evidence in any of the</p> <p>14 contracts that I reviewed.</p> <p>15 MR. WINE: Also goes beyond the</p> <p>16 scope of the witness' expert report and is therefore</p> <p>17 inadmissible.</p> <p>18 BY MR. BARR:</p> <p>19 Q. Did you determine, Mr. Jordan, in your</p> <p>20 review of documents and testimony in this case</p> <p>21 whether or not any government contracts with Ryan or</p> <p>22 TRA during this period called for the company to</p> <p style="text-align: right;">Page 126</p>	<p>1 substances at the Harbor Drive Plant?</p> <p>2 MR. WINE: Objection, calls for --</p> <p>3 same objections. Also calls for speculation, calls</p> <p>4 for hearsay testimony, assumes facts not in</p> <p>5 evidence. Calls for a legal conclusion.</p> <p>6 A. In the contract documents that I</p> <p>7 reviewed, there is no indication that the government</p> <p>8 had any such plans to dispose of hazardous</p> <p>9 materials.</p> <p>10 BY MR. BARR:</p> <p>11 Q. In any other documents did you perceive</p> <p>12 any such intent?</p> <p>13 MR. WINE: Same objections.</p> <p>14 A. In all of the documents I looked at,</p> <p>15 there is no such evidence.</p> <p>16 BY MR. BARR:</p> <p>17 Q. Did you determine in your review of</p> <p>18 documents and testimony in this case whether or not</p> <p>19 any of these military prime contracts that we've</p> <p>20 marked just now -- whether it indicated any</p> <p>21 contractual purpose other than the manufacture and</p> <p>22 delivery of end item military hardware products?</p> <p style="text-align: right;">Page 128</p>
<p>1 test any government-owned military hardware that</p> <p>2 contained hazardous substances at the Harbor Drive</p> <p>3 Plant?</p> <p>4 MR. WINE: Same objections.</p> <p>5 A. I saw no such evidence.</p> <p>6 BY MR. BARR:</p> <p>7 Q. Did you determine in your review of</p> <p>8 documents and testimony in this case whether or not</p> <p>9 during this time period any Ryan or TRA contracts</p> <p>10 called for the provision by anyone of quantities of</p> <p>11 hazardous substance raw materials in excess of those</p> <p>12 needed for contract performance?</p> <p>13 MR. WINE: Same objections.</p> <p>14 A. I saw nothing in the contract documents</p> <p>15 that I reviewed that the government provided any</p> <p>16 hazardous substances to the contractor as</p> <p>17 government-furnished material.</p> <p>18 BY MR. BARR:</p> <p>19 Q. Did you determine in your review of</p> <p>20 documents and testimony in this case whether or not</p> <p>21 any of the military contracts indicated any</p> <p>22 government plan or intent to dispose of hazardous</p> <p style="text-align: right;">Page 127</p>	<p>1 MR. WINE: Objection, the documents</p> <p>2 speak for themselves, lacks foundation, assumes</p> <p>3 facts not in evidence. To the extent that the</p> <p>4 question calls for testimony beyond the scope of the</p> <p>5 witness' expert report is inadmissible.</p> <p>6 A. There's nothing contained in these</p> <p>7 documents that indicates any purpose other than the</p> <p>8 delivery of specified product to the government.</p> <p>9 BY MR. BARR:</p> <p>10 Q. Did some of the contracts -- or did one</p> <p>11 or more of the contracts call for research to</p> <p>12 develop engineering information to your</p> <p>13 recollection?</p> <p>14 MR. WINE: Objection, leading.</p> <p>15 A. I -- my recollection is that there were</p> <p>16 some contractual documents. I'm not sure whether</p> <p>17 they're included in this group or not, where the</p> <p>18 government had issued a performance-type</p> <p>19 specification and the contractor had the requirement</p> <p>20 to design a product that met those performance</p> <p>21 specifications and then to deliver data to the</p> <p>22 government covering that design.</p> <p style="text-align: right;">Page 129</p>

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<p>1 BY MR. BARR:</p> <p>2 Q. Now, the -- I'd like you to -- just for</p> <p>3 clarity's sake, we're going to address the progress</p> <p>4 payment entitled vesting provisions later in this</p> <p>5 deposition, but for now we're going to put those to</p> <p>6 one side.</p> <p>7 With that understanding, did you</p> <p>8 determine in your review of documents and testimony</p> <p>9 in this case whether or not the government owned,</p> <p>10 possessed or supplied any hazardous substances used</p> <p>11 by Ryan or TRA at the Harbor Drive Plant?</p> <p>12 MR. WINE: Objection, calls for a</p> <p>13 legal conclusion, assumes facts not in evidence,</p> <p>14 goes beyond the scope of the witness' expert report,</p> <p>15 goes to an ultimate issue in the case reserved for</p> <p>16 the finder of fact.</p> <p>17 A. There is no evidence that I saw in any</p> <p>18 contract or related documents that indicated that</p> <p>19 the government had provided any such hazardous</p> <p>20 materials to the contractor of government-furnished</p> <p>21 material.</p> <p>22 MR. WINE: Does counsel's question</p> <p style="text-align: right;">Page 130</p>	<p>1 decisions, nor do I know of any document that gives</p> <p>2 them the authority to make that kind of -- or</p> <p>3 responsibility of making those kinds of decisions.</p> <p>4 BY MR. BARR:</p> <p>5 Q. Did you determine in your review of</p> <p>6 documents and testimony in this case whether or not</p> <p>7 any of the 1950s through 1990s contracts between the</p> <p>8 military and Ryan and TRA directed or mandated their</p> <p>9 chemical waste handling decisions, facilities or</p> <p>10 activities at the Harbor Drive Plant?</p> <p>11 MR. WINE: Objection, compound.</p> <p>12 Same objections to the prior question.</p> <p>13 A. I saw nothing in either the contracts or</p> <p>14 the specifications that I reviewed that indicated</p> <p>15 any responsibility on the part of the government</p> <p>16 relative to disposal of hazardous materials.</p> <p>17 BY MR. BARR:</p> <p>18 Q. Now, is the document -- are the</p> <p>19 documents and testimony in this case with respect to</p> <p>20 this last series of questions that I have asked</p> <p>21 you -- is that consistent or inconsistent with your</p> <p>22 experience as a government contracting officer?</p> <p style="text-align: right;">Page 132</p>
<p>1 also relate to testimony in the case?</p> <p>2 MR. BARR: Yes.</p> <p>3 MR. WINE: Just want to make sure we</p> <p>4 have a clear record.</p> <p>5 BY MR. BARR:</p> <p>6 Q. Was that your understanding as well,</p> <p>7 Mr. Jordan?</p> <p>8 A. Could you repeat that, please?</p> <p>9 Q. Sure. Did you determine in your review</p> <p>10 of documents and testimony in this case whether or</p> <p>11 not the government owned, possessed or supplied any</p> <p>12 of the hazardous substances used by Ryan or TRA in</p> <p>13 performing contracts at the Harbor Drive Plant?</p> <p>14 A. I saw no evidence that the government</p> <p>15 owned any such material.</p> <p>16 Q. And did you determine in your review of</p> <p>17 the documents and testimony in this case whether</p> <p>18 the -- whether any government personnel made any</p> <p>19 decisions regarding the disposal of chemical waste</p> <p>20 generated at that plant during that time period?</p> <p>21 MR. WINE: Same objections.</p> <p>22 A. I saw no evidence that they made any</p> <p style="text-align: right;">Page 131</p>	<p>1 MR. WINE: Same objections.</p> <p>2 A. It is extremely consistent with my</p> <p>3 experience and all of the contracts that I reviewed</p> <p>4 as either a contracting officer and/or an executive</p> <p>5 of a contracting organization.</p> <p>6 BY MR. BARR:</p> <p>7 Q. Now, with respect to responsibilities</p> <p>8 for environmental matters, I want to break this up</p> <p>9 into two time periods: The early 1960s up until</p> <p>10 approximately the mid 1970s, and the mid 1970s</p> <p>11 forward. You with me so far?</p> <p>12 A. With you.</p> <p>13 Q. With respect to environmental</p> <p>14 responsibilities as a government contracting</p> <p>15 officer, what was your understanding as to who was</p> <p>16 responsible for the contractor's environmental</p> <p>17 matters?</p> <p>18 MR. WINE: Objection, compound,</p> <p>19 vague and ambiguous with regard to the use of the</p> <p>20 terms environmental matters or environmental</p> <p>21 responsibilities, vague with respect to which time</p> <p>22 period counsel's referring to. Also calls for a</p> <p style="text-align: right;">Page 133</p>

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<p>1 legal conclusion.</p> <p>2 BY MR. BARR:</p> <p>3 Q. Let's go backwards. With respect to</p> <p>4 environmental responsibilities, in other words, the</p> <p>5 handling of chemical waste or contamination</p> <p>6 facilities --</p> <p>7 A. Okay.</p> <p>8 Q. -- procedures, did you have an</p> <p>9 understanding as to who was responsible for those</p> <p>10 matters in the period between the early 1960s and</p> <p>11 the mid 1970s?</p> <p>12 MR. WINE: Objection, calls for a</p> <p>13 legal conclusion, assumes facts not in evidence,</p> <p>14 relevance.</p> <p>15 A. I'm not aware of anything specifically</p> <p>16 in the regulation relative to who had the</p> <p>17 responsibility for environmental issues during that</p> <p>18 period of the '60s through approximately 1975.</p> <p>19 BY MR. BARR:</p> <p>20 Q. Do you draw a conclusion from the fact</p> <p>21 there was nothing specific?</p> <p>22 MR. WINE: Objection.</p> <p style="text-align: right;">Page 134</p>	<p>1 Q. Did you have an understanding as to</p> <p>2 whether it was the contractor's responsibility or</p> <p>3 the government's responsibility?</p> <p>4 MR. WINE: Objection, asked and</p> <p>5 answered. The witness has testified he had no -- it</p> <p>6 is not part of the national -- hold on. I just want</p> <p>7 to make sure I don't misstate it. Hold on one</p> <p>8 second.</p> <p>9 MR. BARR: We can --</p> <p>10 MR. WINE: I'm sorry, I missed the</p> <p>11 answer.</p> <p>12 MR. BARR: We can move along.</p> <p>13 BY MR. BARR:</p> <p>14 Q. Question -- new question for you,</p> <p>15 Mr. Jordan. In the mid 1970s, did contractor</p> <p>16 obligations regarding environmental matters as we've</p> <p>17 described them -- were those articulated in the</p> <p>18 ASPRs?</p> <p>19 A. The Armed Services Procurement</p> <p>20 Regulations were amended in I believe it was 1975 to</p> <p>21 include a requirement to put a clean air and water</p> <p>22 clause into contracts requiring contractors to</p> <p style="text-align: right;">Page 136</p>
<p>1 A. Other than it was not a part of the</p> <p>2 national consciousness relative to environmental</p> <p>3 issues during that period of time.</p> <p>4 BY MR. BARR:</p> <p>5 Q. Did you have an opinion as a government</p> <p>6 contracting official during that period of 19 -- the</p> <p>7 early 1960s to 1975 that -- as to -- as between the</p> <p>8 contractor and the government who had such</p> <p>9 responsibilities?</p> <p>10 MR. WINE: Objection, vague and</p> <p>11 ambiguous. Is counsel asking if he had an opinion</p> <p>12 in the '60s and '70s or does he have an opinion now</p> <p>13 as to the period in the '60s and '70s?</p> <p>14 BY MR. BARR:</p> <p>15 Q. You can answer the question.</p> <p>16 A. During --</p> <p>17 MR. WINE: Objection, vague and</p> <p>18 ambiguous. Calls for a legal conclusion.</p> <p>19 A. During the period of the '60s and '70s</p> <p>20 we paid no attention to the environmental issues</p> <p>21 from the procuring contracting side of the equation.</p> <p>22 BY MR. BARR:</p> <p style="text-align: right;">Page 135</p>	<p>1 comply with the Clean Air and Water Act. Then in I</p> <p>2 believe it was 1977 there was a -- another required</p> <p>3 clause to be included in contracts relative to</p> <p>4 marking and identification of hazardous materials.</p> <p>5 Then there was a --</p> <p>6 Q. Go ahead.</p> <p>7 A. Then there was also at about the same</p> <p>8 time a requirement that if in the event of</p> <p>9 administration of a contract a government employee</p> <p>10 became aware of a violation of any of those</p> <p>11 provisions, they were to notify their supervisor.</p> <p>12 Q. Okay. We'll come back to that last --</p> <p>13 let's mark as some additional exhibits --</p> <p>14 MR. WINE: Can we put 55 through 66</p> <p>15 [sic] to the side?</p> <p>16 MR. BARR: Yes, please. We'll start</p> <p>17 with 66.</p> <p>18 (Deposition Exhibit 66 marked.)</p> <p>19 (Deposition Exhibit 67 marked.)</p> <p>20 (Deposition Exhibit 68 marked.)</p> <p>21 (Deposition Exhibit 69 marked.)</p> <p>22 (Deposition Exhibit 70 marked.)</p> <p style="text-align: right;">Page 137</p>

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<p>1 MR. WINE: So we're through 70 -- 69 2 through 70 -- or 66 through 70. I'm sorry. 3 (Witness Reviews Documents.) 4 MR. WINE: For the record, TDY 5 asserts the same objections that it asserted for 6 ASPR excerpts 26 through 33 and 42 through 51. 7 A. Okay. 8 BY MR. BARR: 9 Q. Mr. Jordan, are what we've marked as 10 Exhibits 66 through 70 the clean air and water and 11 material safety data provisions that you referenced 12 a moment ago? 13 MR. WINE: Objection, leading, 14 assumes facts not in evidence, calls for a legal 15 conclusion. 16 A. Yes, they are. 17 BY MR. BARR: 18 Q. Have you reviewed these documents before 19 today? 20 A. Yes, I have. 21 Q. In your opinion, did these effect 22 changes in the division of responsibilities as</p> <p style="text-align: right;">Page 138</p>	<p>1 was responsible and that -- but to the best of my 2 knowledge, it changed -- they made no changes 3 relative to the responsibilities of employees of the 4 Department of Defense. 5 MR. BARR: Off the record. 6 THE VIDEOGRAPHER: Going off record. 7 Time now is 4:28. 8 (Recess Taken From 4:28 p.m. To 9 4:29 p.m.) 10 THE VIDEOGRAPHER: Going back on 11 record. Time now is 4:29. 12 BY MR. BARR: 13 Q. Mr. Jordan, I am going to hand you back 14 Exhibit 65. This is a 1994 contract 15 N00019-94-C-0087. This is the one -- one of the 16 documents we discussed earlier. 17 MR. WINE: Objection, assumes facts 18 not in evidence, foundation. 19 (Witness Reviews Document.) 20 BY MR. BARR: 21 Q. Mr. Jordan, I'm going to direct your 22 attention to page 5 -- with the Bates numbers 526.</p> <p style="text-align: right;">Page 140</p>
<p>1 between contractors and the government? 2 MR. WINE: Objection, calls for a 3 legal conclusion, vague and ambiguous, beyond the 4 scope of the witness' expert report. 5 A. It specifically put requirements upon 6 the contractor. The government -- the term 7 government may be a little bit misleading because 8 there were different governments involved. There 9 were no responsibilities that I'm aware of relative 10 to the responsibilities of the Department of Defense 11 officials. However, at approximately this time the 12 EPA had responsibilities for enforcement of these 13 kinds of provisions. 14 BY MR. BARR: 15 Q. In terms -- I should -- I should sharpen 16 up the question. In terms of effecting changes as 17 between who was responsible for the environmental 18 matters we discussed at a contractor's plant, did 19 these provisions make changes in terms of who was 20 responsible? 21 MR. WINE: Same objections. 22 A. They articulated the fact that the EPA</p> <p style="text-align: right;">Page 139</p>	<p>1 Do you see a provision there regarding environmental 2 controls? 3 A. Yes, I do. 4 Q. To the best of your recollection, during 5 your experience as a government contracting official 6 was this a standard provision? 7 MR. WINE: Objection, calls for a 8 legal conclusion, vague and ambiguous. The document 9 speaks for itself, relevance. Also outside the 10 scope of the witness' expert report. 11 A. I do not specifically recall this 12 clause. If you'll note that -- it has a date of 13 1991 and references a naval air document. I don't 14 recall whether a similar provision was included in 15 the Air Force requirements or not. 16 BY MR. BARR: 17 Q. Okay. 18 MR. WINE: Move to strike. His 19 testimony goes beyond the scope of the witness' 20 knowledge and expertise. 21 MR. BARR: Oppose the motion. 22 BY MR. BARR:</p> <p style="text-align: right;">Page 141</p>

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<p>1 Q. Mr. Jordan, obviously -- assuming that</p> <p>2 only 14 or 15 contracts in the 1950s to the 1990s</p> <p>3 are available to either of the parties in this case,</p> <p>4 how do we know that they're representative of the</p> <p>5 many others that we know existed between the</p> <p>6 parties?</p> <p>7 MR. WINE: Objection, assumes facts</p> <p>8 not in evidence, goes beyond the scope of the</p> <p>9 witness' area of expertise, goes beyond his expert</p> <p>10 opinion and report, lacks a sufficient basis to make</p> <p>11 an opinion -- to offer an opinion in this matter on</p> <p>12 the propounded question. Calls for a legal</p> <p>13 conclusion.</p> <p>14 A. Based upon my experience and knowledge</p> <p>15 of the customs and practices within the federal</p> <p>16 government for writing contracts based upon the</p> <p>17 existing set of regulations embodied within the</p> <p>18 Armed Services Procurement Regulations and the fact</p> <p>19 that there was a high degree of consistency in those</p> <p>20 regulations from year to year over time within the</p> <p>21 relevant period of the contract, it is a -- almost a</p> <p>22 certainty that all contracts written within that</p> <p style="text-align: right;">Page 142</p>	<p>1 regulations such as the Armed Services Procurement</p> <p>2 Regulations.</p> <p>3 BY MR. BARR:</p> <p>4 Q. Did that extend to the FAR as well?</p> <p>5 A. Yes, it does. The FAR even goes</p> <p>6 further. It applies to all federal activities.</p> <p>7 Q. Not just the military is what you're --</p> <p>8 A. Not just the military.</p> <p>9 Q. Now, during the course of your career as</p> <p>10 a government contracting official, did any of the</p> <p>11 defense contractors, in your opinion, who agreed to</p> <p>12 comply with military contracts and specifications</p> <p>13 transfer responsibility for their operations to the</p> <p>14 government?</p> <p>15 MR. WINE: Objection, calls for a</p> <p>16 legal conclusion, vague and ambiguous, assumes facts</p> <p>17 not in evidence.</p> <p>18 A. Terms and conditions of contracts that I</p> <p>19 was personally involved in and the contracts that I</p> <p>20 have reviewed and my familiarity with government</p> <p>21 regulations pertaining to the contracting process,</p> <p>22 responsibility for performance under government</p> <p style="text-align: right;">Page 144</p>
<p>1 time and period would have contained the same terms</p> <p>2 and conditions as the contracts that we have found</p> <p>3 that have survived time.</p> <p>4 BY MR. BARR:</p> <p>5 Q. Now, are contracts -- or government --</p> <p>6 or defense contracts entered into by government</p> <p>7 personnel in one location in the United States or in</p> <p>8 multiple locations?</p> <p>9 MR. WINE: Objection, vague and</p> <p>10 ambiguous.</p> <p>11 A. They're entered into at multiple</p> <p>12 locations. Within the Air Force we had five air</p> <p>13 material areas that are -- if you will, air logistic</p> <p>14 centers. The Navy had a number of activities that</p> <p>15 issued contracts. Within the Air Force there were</p> <p>16 base contracting organizations at virtually every</p> <p>17 Air Force Base within the Air Force. And then the</p> <p>18 Army had similar activities within its command that</p> <p>19 had the authority to issue contracts. So, yes, very</p> <p>20 clearly they were issued at multiple locations by</p> <p>21 multiple contracting officers, and that's why it</p> <p>22 became important to have a consistent set of</p> <p style="text-align: right;">Page 143</p>	<p>1 contracts was expressly that of the contractor and</p> <p>2 not the government.</p> <p>3 BY MR. BARR:</p> <p>4 Q. And, again, during the course of your</p> <p>5 career as a government contracting official and your</p> <p>6 experience with contracts and specifications, did</p> <p>7 the contract -- did any contract and specification</p> <p>8 requirements that certain chemicals be used in a</p> <p>9 manufacturing process -- were those requirements</p> <p>10 related or unrelated as to how or where waste</p> <p>11 chemicals from that process would be disposed of?</p> <p>12 MR. WINE: Objection, vague and</p> <p>13 ambiguous, compound, calls for a legal conclusion,</p> <p>14 relevance.</p> <p>15 A. I have seen nothing either in the</p> <p>16 specific contract itself or any of the</p> <p>17 specifications that I have reviewed that spoke to</p> <p>18 the issue of disposal of hazardous chemicals.</p> <p>19 BY MR. BARR:</p> <p>20 Q. My question was more general. And that</p> <p>21 related to your experience during your career as a</p> <p>22 government contracting official with all of the</p> <p style="text-align: right;">Page 145</p>

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<p>1 other contracts and specifications with which you</p> <p>2 came in contact.</p> <p>3 MR. WINE: Same objections.</p> <p>4 A. In my experience, none of the contracts</p> <p>5 that I was personally involved in spoke to the issue</p> <p>6 of disposal of hazardous chemicals.</p> <p>7 BY MR. BARR:</p> <p>8 Q. Is that also true for the specifications</p> <p>9 with which you came in contact?</p> <p>10 MR. WINE: Same --</p> <p>11 A. I use the term contracts generically to</p> <p>12 include all the exhibits and attachments thereto.</p> <p>13 MR. WINE: Same objections.</p> <p>14 BY MR. BARR:</p> <p>15 Q. Let's turn our attention to another</p> <p>16 subject, and that's TDY's argument that the</p> <p>17 government paid TRA's environmental costs as part of</p> <p>18 their overhead. You're familiar with that issue?</p> <p>19 A. Yes, I am.</p> <p>20 MR. WINE: Objection to the extent</p> <p>21 it goes beyond the scope of the witness' expert</p> <p>22 report.</p> <p style="text-align: right;">Page 146</p>	<p>1 calls for a legal conclusion.</p> <p>2 A. In my opinion, it is not a reasonable</p> <p>3 assumption.</p> <p>4 MR. WINE: Goes beyond the scope of</p> <p>5 the witness' expert report.</p> <p>6 BY MR. BARR:</p> <p>7 Q. Generally speaking, and without getting</p> <p>8 into detail, what is the basis of your opinion?</p> <p>9 MR. WINE: Objection. To ask the</p> <p>10 witness to give an opinion without going into detail</p> <p>11 deprives TDY of the opportunity to cross-examine the</p> <p>12 witness and to determine the ability of the witness</p> <p>13 to offer competently the opinion proffered by the</p> <p>14 government. Therefore, we object to the question.</p> <p>15 We also believe that the question goes beyond the</p> <p>16 scope of the witness' expert report and beyond the</p> <p>17 expertise of the witness.</p> <p>18 A. The basic ground rules for including</p> <p>19 costs in a contractor's overhead that was recognized</p> <p>20 by the government for inclusion in those costs that</p> <p>21 were reimbursed to the contractor, either under</p> <p>22 government contracts and/or subcontracts and/or</p> <p style="text-align: right;">Page 148</p>
<p>1 BY MR. BARR:</p> <p>2 Q. Now, are you familiar with their</p> <p>3 argument -- TDY's argument that the government would</p> <p>4 now pay for its environmental site cleanup costs as</p> <p>5 part of its overhead cost pools if TRA were still</p> <p>6 performing government contracts at the site?</p> <p>7 MR. WINE: Objection to the extent</p> <p>8 it mischaracterizes TDY's legal position, assumes</p> <p>9 facts not in evidence.</p> <p>10 A. I'm familiar with that argument, yes.</p> <p>11 MR. WINE: Also beyond the scope of</p> <p>12 the witness' knowledge and expertise.</p> <p>13 BY MR. BARR:</p> <p>14 Q. Mr. Jordan, over the course of your</p> <p>15 career, did you become familiar from time to time</p> <p>16 with reimbursement of overhead cost issues?</p> <p>17 A. Yes, I did.</p> <p>18 Q. Now, with respect to TDY's argument that</p> <p>19 the government would now pay for the environmental</p> <p>20 site cleanup costs as part of overhead cost pools,</p> <p>21 in your opinion, is that a reasonable assumption?</p> <p>22 MR. WINE: Same objections. Also</p> <p style="text-align: right;">Page 147</p>	<p>1 commercial contracts, the government had to make a</p> <p>2 positive determination that the costs were</p> <p>3 allowable, allocable and reasonable.</p> <p>4 BY MR. BARR:</p> <p>5 Q. And where would the basic principles, as</p> <p>6 far as costs are concerned -- where would those be</p> <p>7 found?</p> <p>8 MR. WINE: Objection, leading, calls</p> <p>9 for a legal conclusion, goes beyond the scope of the</p> <p>10 witness' expertise and his expert opinion.</p> <p>11 A. There is a --</p> <p>12 BY MR. BARR:</p> <p>13 Q. I don't mean specific provisions, I just</p> <p>14 mean general.</p> <p>15 A. Generally it's the regulations that the</p> <p>16 auditors use for use in the determination of</p> <p>17 allowability and allocability and reasonableness of</p> <p>18 costs.</p> <p>19 Q. And are those -- were those -- are they</p> <p>20 contained in the ASPRs and the FARs?</p> <p>21 MR. WINE: Same objections.</p> <p>22 A. Contained in the ASPRs, the FARs and</p> <p style="text-align: right;">Page 149</p>

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<p>1 there was a specific auditor manual that they used</p> <p>2 in helping them to make those determinations.</p> <p>3 BY MR. BARR:</p> <p>4 Q. Were there -- were there more -- was</p> <p>5 there more than one government guidance document</p> <p>6 concerning environmental costs that you're aware of?</p> <p>7 MR. WINE: Same objections.</p> <p>8 A. The documents that I'm aware of were a</p> <p>9 specific guidance document that had been issued by a</p> <p>10 defense contract audit agency and then one or two</p> <p>11 supplemental guidance documents that had been issued</p> <p>12 by DCAA relative to environmental costs.</p> <p>13 BY MR. BARR:</p> <p>14 Q. And, in fact, you were asked about one</p> <p>15 of those documents by Mr. Wine a couple of years</p> <p>16 ago. Do you recall that?</p> <p>17 A. I think so, yes.</p> <p>18 Q. We're going to mark three documents,</p> <p>19 Exhibit 71, 72 and 73.</p> <p>20 (Deposition Exhibit 71 marked.)</p> <p>21 (Deposition Exhibit 72 marked.)</p> <p>22 (Deposition Exhibit 73 marked.)</p> <p style="text-align: right;">Page 150</p>	<p>1 documents in connection with your work on this case?</p> <p>2 A. Yes, I have.</p> <p>3 Q. And were you generally familiar with</p> <p>4 these documents during your time as a government</p> <p>5 contracting official?</p> <p>6 A. I was generally aware of, but not</p> <p>7 specifically.</p> <p>8 MR. WINE: I would move to strike</p> <p>9 any testimony related to the documents that the</p> <p>10 witness was not familiar with specifically on the</p> <p>11 basis of his knowledge for which he's being offered</p> <p>12 as an expert.</p> <p>13 BY MR. BARR:</p> <p>14 Q. Now, let me direct your attention to the</p> <p>15 first of these three documents, the October 1992</p> <p>16 DCAA guidance. Were you aware, generally speaking,</p> <p>17 of this document?</p> <p>18 MR. WINE: Objection.</p> <p>19 A. Generally, yes.</p> <p>20 BY MR. BARR:</p> <p>21 Q. Same question with respect to the</p> <p>22 July 1993 DCAA contract audit manual, section -- or</p> <p style="text-align: right;">Page 152</p>
<p>1 BY MR. BARR:</p> <p>2 Q. I'll correct what I said. Mr. Wine</p> <p>3 actually asked you about two of them, although he</p> <p>4 gave you the wrong number on one of them.</p> <p>5 MR. WINE: Object to the extent it</p> <p>6 characterizes facts not in evidence.</p> <p>7 (Witness Reviews Documents.)</p> <p>8 MR. WINE: Also to the extent that</p> <p>9 counsel's referencing the testimony of Mr. Jordan in</p> <p>10 the past as a 30(b)(6) witness, we would object as</p> <p>11 being beyond the scope of the present exercise.</p> <p>12 MR. BARR: Well, there's no</p> <p>13 limitations posed by 30(b)(6) in that regard.</p> <p>14 MR. WINE: He's here as an expert</p> <p>15 witness, not as a 30(b)(6) deponent.</p> <p>16 MR. BARR: You certainly didn't</p> <p>17 follow that distinction in 2009.</p> <p>18 MR. WINE: Well, I know you feel</p> <p>19 that way.</p> <p>20 A. Okay.</p> <p>21 BY MR. BARR:</p> <p>22 Q. Mr. Jordan, have you reviewed these</p> <p style="text-align: right;">Page 151</p>	<p>1 paragraph 7-1920.</p> <p>2 A. Again, I was generally aware of it, yes.</p> <p>3 MR. WINE: Same objections.</p> <p>4 BY MR. BARR:</p> <p>5 Q. And how did you become generally aware</p> <p>6 of these documents?</p> <p>7 A. Just through the ordinary course of</p> <p>8 becoming familiar with the rules and regulations of</p> <p>9 governing contracts awarded by the government.</p> <p>10 Q. Do you recall whether or not any of</p> <p>11 these would have been covered in any of the various</p> <p>12 courses that you took as part of your continuing</p> <p>13 training?</p> <p>14 A. I don't specifically recall content of</p> <p>15 those training courses, but very possible.</p> <p>16 MR. WINE: Same objections.</p> <p>17 BY MR. BARR:</p> <p>18 Q. And did you become generally aware of</p> <p>19 the May 1994 DCAA guidance that we've marked as</p> <p>20 Exhibit 73?</p> <p>21 MR. WINE: Same objections.</p> <p>22 A. Generally aware, yes.</p> <p style="text-align: right;">Page 153</p>

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<p>1 MR. WINE: Also to the extent that</p> <p>2 the documents were not referenced in the witness'</p> <p>3 expert report and go beyond the scope of his expert</p> <p>4 opinion, they are offered -- they represent</p> <p>5 improper -- this represents improper opinion</p> <p>6 testimony.</p> <p>7 BY MR. BARR:</p> <p>8 Q. Now, during your time as a government</p> <p>9 procurement official were you aware of the -- of</p> <p>10 ASPR and FAR provisions relating to advance</p> <p>11 agreements?</p> <p>12 MR. WINE: Objection, assumes facts</p> <p>13 not in evidence, calls for a legal conclusion, vague</p> <p>14 and ambiguous with respect to the use of the term</p> <p>15 advance agreements.</p> <p>16 A. Yes, I was.</p> <p>17 BY MR. BARR:</p> <p>18 Q. Do you know what an advance agreement</p> <p>19 is?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Could you explain it to the court,</p> <p>22 please.</p> <p style="text-align: right;">Page 154</p>	<p>1 (Deposition Exhibit 83 marked.)</p> <p>2 MR. WINE: Through 83?</p> <p>3 MR. BARR: Correct.</p> <p>4 (Witness Reviews Documents.)</p> <p>5 MR. WINE: TDY propounds the same</p> <p>6 objections that it has made with respect to the</p> <p>7 prior ASPR excerpts, Exhibits 26 through 33, 42</p> <p>8 through 51 and 66 through 70. Also to the extent</p> <p>9 that the compilations include regulations pertaining</p> <p>10 to contracts that are not relevant to the matter in</p> <p>11 dispute, we'd object on the basis of relevance.</p> <p>12 (Witness Reviews Documents.)</p> <p>13 A. These appear to be regulations that I</p> <p>14 had previously reviewed.</p> <p>15 BY MR. BARR:</p> <p>16 Q. And do these relate to advance</p> <p>17 agreements?</p> <p>18 A. Yes, they do.</p> <p>19 MR. WINE: Objection, previous.</p> <p>20 BY MR. BARR:</p> <p>21 Q. In your opinion, do these advance</p> <p>22 agreements -- is the language, form and content of</p> <p style="text-align: right;">Page 156</p>
<p>1 A. Advance agreement is a specific written</p> <p>2 agreement between a contractor and the government</p> <p>3 relative to how certain costs would be incurred to</p> <p>4 preclude subsequent misunderstandings and</p> <p>5 disagreements between the parties relative to the</p> <p>6 allowability of certain costs.</p> <p>7 Q. Okay. Let's use another set of excerpts</p> <p>8 from the ASPRs. Mr. Jordan, before I give you these</p> <p>9 documents, did you review from time to time ASPR and</p> <p>10 FAR provisions relating to advance agreements during</p> <p>11 your career as a government contracting officer?</p> <p>12 A. Best of my recollection, yes.</p> <p>13 Q. We're going to start with 74.</p> <p>14 (Deposition Exhibit 74 marked.)</p> <p>15 (Deposition Exhibit 75 marked.)</p> <p>16 (Deposition Exhibit 76 marked.)</p> <p>17 (Deposition Exhibit 77 marked.)</p> <p>18 (Deposition Exhibit 78 marked.)</p> <p>19 (Deposition Exhibit 79 marked.)</p> <p>20 (Deposition Exhibit 80 marked.)</p> <p>21 (Deposition Exhibit 81 marked.)</p> <p>22 (Deposition Exhibit 82 marked.)</p> <p style="text-align: right;">Page 155</p>	<p>1 these excerpts over time consistent or did they</p> <p>2 change in material ways?</p> <p>3 MR. WINE: Objection, calls for a</p> <p>4 legal conclusion and the regulations speak for</p> <p>5 themselves.</p> <p>6 A. Substantially consistent.</p> <p>7 BY MR. BARR:</p> <p>8 Q. Did you learn of any such advance</p> <p>9 agreements between TRA and the government?</p> <p>10 MR. WINE: Objection, assumes facts</p> <p>11 not in evidence, calls for a legal conclusion.</p> <p>12 A. I'm only aware of one advance agreement</p> <p>13 executed between the government and the contractor.</p> <p>14 MR. BARR: I think -- it's 5:00. I</p> <p>15 think that this would be a good place for us to stop</p> <p>16 for today. I know we're going to -- I had</p> <p>17 originally planned to go a little bit longer, but I</p> <p>18 think under the circumstances we'll call it a day.</p> <p>19 MR. WINE: Okay.</p> <p>20 THE VIDEOGRAPHER: Going off record.</p> <p>21 Time now is 4:59.</p> <p>22 (Deposition Recessed At 4:59 p.m.)</p> <p style="text-align: right;">Page 157</p>

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Tommy Jordan

<p>1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC</p> <p>2</p> <p>3 I, Micheal A. Johnson, Registered</p> <p>4 Professional Reporter, the officer before whom the</p> <p>5 foregoing deposition was taken, do hereby certify</p> <p>6 that the foregoing transcript is a true and correct</p> <p>7 record of the testimony given; that said testimony</p> <p>8 was taken by me stenographically and thereafter</p> <p>9 reduced to typewriting under my supervision; and</p> <p>10 that I am neither counsel for, related to, nor</p> <p>11 employed by any of the parties to this case and have</p> <p>12 no interest, financial or otherwise, in its outcome.</p> <p>13 GIVEN UNDER MY HAND AND SEAL of office</p> <p>14 on this _____ day of _____, 2011.</p> <p>15</p> <p>16 _____</p> <p>17 MICHEAL A. JOHNSON, RPR, CRR</p> <p>18 NCRA Registered Professional Reporter</p> <p>19 NCRA Certified Realtime Reporter</p> <p>20 NCRA Realtime System Administrator</p> <p>21 Certified LiveNote Reporter</p> <p>22</p> <p>Notary Public in and for the</p> <p>State of Texas</p> <p>My Commission Expires: 8/8/2012</p> <p style="text-align: right;">Page 158</p>	<p>1 Digital Evidence Group, L.L.C.</p> <p>2 1299 Pennsylvania Ave NW, Suite 1130E</p> <p>3 Washington, D.C. 20004</p> <p>4 (202) 232-0646</p> <p>5</p> <p>SIGNATURE PAGE</p> <p>6</p> <p>7</p> <p>8 Case Name: TDY Holdings v. United States of America</p> <p>9 Witness Name: Tommy Jordan</p> <p>10 Deposition Date: 10/10/11</p> <p>11 I do hereby acknowledge that I have read</p> <p>12 and examined the foregoing pages</p> <p>13 of the transcript of my deposition and that:</p> <p>14 (Check appropriate box):</p> <p>15 () The same is a true, correct and</p> <p>16 complete transcription of the answers given by</p> <p>17 me to the questions therein recorded.</p> <p>18 () Except for the changes noted in the</p> <p>19 attached Errata Sheet, the same is a true,</p> <p>20 correct and complete transcription of the</p> <p>21 answers given by me to the questions therein</p> <p>22 recorded.</p> <p>DATE _____ WITNESS SIGNATURE _____</p> <p style="text-align: right;">Page 160</p>
<p>1 Tommy Jordan c/o</p> <p>2 DICKSTEIN SHAPIRO, L.L.P.</p> <p>3 1825 Eye Street NW</p> <p>4 Washington, D.C. 20006-5403</p> <p>5</p> <p>Case: TDY Holdings v. United States of America</p> <p>6 Date of deposition: 10/10/11</p> <p>7 Deponent: Tommy Jordan</p> <p>8</p> <p>9 Please be advised that the transcript in the above</p> <p>10 referenced matter is now complete and ready for signature.</p> <p>11 The deponent may come to this office to sign the transcript,</p> <p>12 a copy may be purchased for the witness to review and sign,</p> <p>13 or the deponent and/or counsel may waive the option of signing.</p> <p>14 Please advise us of the option selected.</p> <p>15 Please forward the errata sheet and the original signed</p> <p>16 signature page to counsel noticing the deposition, noting the applicable</p> <p>17 time period allowed for such by the governing Rules of Procedure.</p> <p>18 If you have any questions, please do not hesitate to call our office at</p> <p>19 (202)-232-0646.</p> <p>20</p> <p>21 Sincerely,</p> <p>22</p> <p>Digital Evidence Group</p> <p>Copyright 2011 Digital Evidence Group</p> <p>Copying is forbidden, including electronically, absent express written consent.</p> <p style="text-align: right;">Page 159</p>	<p>1 Digital Evidence Group, L.L.C.</p> <p>2 1299 Pennsylvania Ave NW, Suite 1130E</p> <p>3 Washington, D.C. 20004</p> <p>4 (202) 232-0646</p> <p>5</p> <p>ERRATA SHEET</p> <p>6</p> <p>7</p> <p>8 Case Name: TDY Holdings v. United States of America</p> <p>9 Witness Name: Tommy Jordan</p> <p>10 Deposition Date: 10/10/11</p> <p>11 Page No. Line No. Change</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>Signature _____ Date _____</p> <p style="text-align: right;">Page 161</p>

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

TDY HOLDINGS, LLC, and	§
TDY INDUSTRIES, INC.	§
	§
Plaintiffs,	§
	§
VS.	§ Case No. 07cv0787 JAH
	§
UNITED STATES OF AMERICA,	§
UNITED STATES DEPARTMENT	§
OF DEFENSE, and ROBERT M.	§
GATES, in his official	§
capacity as SECRETARY OF	§
DEFENSE	§
	§
Defendants.	§

Videotaped Deposition of
TOMMY B. JORDAN
San Antonio, Texas
Wednesday, October 12, 2011
10:03 a.m.
VOLUME 2

Reported by: Steven Stogel, CSR, CLR

DIGITAL EVIDENCE GROUP
1299 Pennsylvania Ave, NW, Suite 1130E
Washington, DC 20004
(202) 232-0646

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4	NUMBER	DESCRIPTION	MARKED	4	NUMBER	DESCRIPTION	MARKED
5	Exhibit 159	7/1/74 ASPR Excerpt	283	5	Exhibit 178	Ryan Annual Report for the Fiscal Year 1953	297
6	Exhibit 160	10/1/75 ASPR Excerpt	283	6	Exhibit 179	Ryan Annual Report for the Fiscal Year 1954	297
7	Exhibit 161	7/1/76 ASPR Excerpt	283	7	Exhibit 180	Ryan Annual Report for the Fiscal Year 1955	297
8	Exhibit 162	3/12/79 ASPR Excerpt	283	8	Exhibit 181	Ryan Annual Report for the Fiscal Year 1956	297
9	Exhibit 163	9/1/82 ASPR Excerpt	283	9	Exhibit 182	Ryan Annual Report for the Fiscal Year 1957	297
10	Exhibit 164	4/1/84 Federal Acquisition Regulation Excerpt	283	10	Exhibit 183	Ryan Annual Report for the Fiscal Year 1958	297
11	Exhibit 165	4/1/84 Federal Acquisition Regulation Excerpt	283	11	Exhibit 184	Ryan Annual Report for the Fiscal Year 1959	297
12	Exhibit 166	Federal Acquisition Regulation 1984 Edition Excerpt	283	12			
13	Exhibit 167	1990 FAR Excerpt	283	13			
14	Exhibit 168	June 1997 FAR Excerpt	283	14			
15	Exhibit 169	June 1997 FAR Excerpt	283	15			
16				16			
17				17			
18				18			
19				19			
20				20			
21				21			
22				22			
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1	DEPOSITION EXHIBITS			1	PROCEEDINGS	
2	TOMMY B. JORDAN			2	THE VIDEOGRAPHER: This marks the	
3	October 12, 2011			3	start of the continuing deposition of Tommy B.	
4	NUMBER DESCRIPTION MARKED			4	Jordan, Volume 2. Today is Wednesday, October	
5	Exhibit 185 Ryan Annual Report for the Fiscal 297			5	the 12th, 2011. The time on the record is 10:03.	
6	Year 1960			6	TOMMY B. JORDAN	
7	Bates US0063708 - US0063743			7	having been previously sworn, continued to testify	
8	Exhibit 186 Ryan Annual Report for the Fiscal 297			8	as follows:	
9	Year 1961			9	EXAMINATION (CONTINUED)	
10	Bates US0063744 - US0063778			10	BY MR. BARR:	
11	Exhibit 187 Ryan Annual Report for the Fiscal 297			11	Q. Good morning, Mr. Jordan.	
12	Year 1962			12	A. Good morning.	
13	Bates US0063779 - US0063814			13	Q. This is a continuation of your	
14	Exhibit 188 Ryan Annual Report for the Fiscal 297			14	deposition, which -- for trial testimony purposes,	
15	Year 1963			15	which we began on Monday of this week, October	
16	Bates US0063815 - US0063850			16	the 10th, and you understand, I take it, that you	
17	Exhibit 189 Ryan Annual Report for the Fiscal 297			17	remain under oath?	
18	Year 1964			18	A. I understand.	
19	Bates US0063851 - US0063886			19	Q. When we adjourned on Monday the 10th, it	
20	Exhibit 190 Ryan Annual Report for the Fiscal 297			20	appeared that you had -- you were fairly fatigued	
21	Year 1965			21	at that point, at least it did to me.	
22	Bates US0063887 - US0063921			22	Was my conclusion accurate?	
	Exhibit 191 Ryan Annual Report for the Fiscal 297					
	Year 1966					
	Bates US0063923 - US0063962					
	Exhibit 192 Ryan Annual Report for the Fiscal 297					
	Year 1967					
	Bates US0063963 - US0063987					
	Exhibit 193 ASPR Excerpts 307					
	Bates US0064277 - US0064281					
	Page 179				Page 181	
1	DEPOSITION EXHIBITS			1	A. I was fairly tired, yes.	
2	TOMMY B. JORDAN			2	Q. When we left off, we were talking about	
3	October 12, 2011			3	advance agreements. And did you learn in this case	
4	NUMBER DESCRIPTION MARKED			4	of any advance agreements between TRA and the	
5	Exhibit 194 ASPR The 1969 Edition Excerpts 307			5	government?	
6	Year 1969			6	MR. WINE: Objection, assumes facts	
7	Bates US0159156 - US0159161			7	not in evidence.	
8	Exhibit 195 ASPR The 1976 Edition Excerpts 307			8	A. Yes, there was one advance agreement	
9	Year 1976			9	that I reviewed.	
10	Bates US0159178 - US0159182			10	BY MR. BARR:	
11	Exhibit 196 4/1/84 FAR Excerpt 307			11	Q. And very briefly, can you describe what	
12	Year 1984			12	led up to that advance agreement?	
13	Bates US0251418 - US0251422			13	A. There was a --	
14	Exhibit 197 1990 FAR Excerpt 307			14	MR. WINE: Object --	
15	Year 1990			15	A. I'm sorry.	
16	Bates US0251427 - US0251431			16	MR. WINE: Objection, assumes facts	
17	Exhibit 198 June 1997 FAR Excerpt 307			17	not in evidence, leading.	
18	Year 1997			18	A. There was a series of discussions	
19	Bates US0251432 - US0251437			19	relative to a DCAA audit that had disallowed	
20				20	certain costs associated with cleanup of the	
21				21	so-called Convair Lagoon and a recognition by the	
22				22	parties that it would be very difficult to make a	
	Page 180				Page 182	

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<p>1 determination that those costs were allowable and</p> <p>2 allocable and reasonable, and then based upon some</p> <p>3 prior DCAA guidance, starting, I believe, in 1992,</p> <p>4 the parties agreed to negotiate and execute an</p> <p>5 advance and settlement agreement.</p> <p>6 BY MR. BARR:</p> <p>7 Q. Okay. Let me mark as some additional</p> <p>8 exhibits in this case four documents. I'll ask you</p> <p>9 to review them briefly, and then I'll have just a</p> <p>10 couple of questions for you.</p> <p>11 MR. BARR: I may have misspoken. I</p> <p>12 think it's five exhibits.</p> <p>13 (Exhibit Nos. 84 through 88 marked)</p> <p>14 BY MR. BARR:</p> <p>15 Q. Mr. Jordan, I've -- if you'd please take</p> <p>16 a look at these, and after you have, I ask you if</p> <p>17 you recall reviewing these documents in connection</p> <p>18 with your work in this case.</p> <p>19 MR. WINE: While the witness is</p> <p>20 reviewing the documents, I'd like to state for the</p> <p>21 record that we object on the -- to the documents on</p> <p>22 the basis of hearsay, that the documents go beyond</p> <p style="text-align: right;">Page 183</p>	<p>1 Q. And at the time you were unable to find</p> <p>2 the audit report or the DCAA document that you</p> <p>3 had -- you had in mind.</p> <p>4 MR. WINE: Assumes facts not in</p> <p>5 evidence.</p> <p>6 BY MR. BARR:</p> <p>7 Q. Do you recall that?</p> <p>8 A. Yes, I do.</p> <p>9 Q. Is this the document that you had in</p> <p>10 mind?</p> <p>11 A. Yes, it is.</p> <p>12 Q. Or I should say: Is this one of the</p> <p>13 documents you had in mind?</p> <p>14 A. Yes.</p> <p>15 Q. Turning to 85 -- Exhibit 85, if you</p> <p>16 would turn, please, to the page with the Bates</p> <p>17 number ending in 190210.</p> <p>18 A. Okay.</p> <p>19 Q. Is this also one of the documents that</p> <p>20 you had in mind relating to a questioning of</p> <p>21 \$300,000 in environmental expenses?</p> <p>22 MR. WINE: Objection insofar as it</p> <p style="text-align: right;">Page 185</p>
<p>1 the scope of the witness' area of expertise and to</p> <p>2 the extent that they go beyond the opinions</p> <p>3 expressed or those documents referenced in his</p> <p>4 expert report are beyond the scope of his opinion</p> <p>5 and, therefore, inadmissible.</p> <p>6 A. Yes, these are documents that I</p> <p>7 reviewed.</p> <p>8 BY MR. BARR:</p> <p>9 Q. Now, let me direct your attention to --</p> <p>10 I believe it's 84 with the Bates number ending in</p> <p>11 192104. I've put a red tape flag on there.</p> <p>12 A. Okay.</p> <p>13 MR. WINE: I'm sorry. 192104?</p> <p>14 BY MR. BARR:</p> <p>15 Q. Now, you had been asked back in December</p> <p>16 of 2009 about whether the DCAA had ever questioned</p> <p>17 or disallowed any environmentally related costs</p> <p>18 pertaining to the Harbor Drive site. Do you recall</p> <p>19 those -- that discussion with Mr. Wine?</p> <p>20 A. Yes, I do.</p> <p>21 MR. WINE: Same line of objections.</p> <p>22 BY MR. BARR:</p> <p style="text-align: right;">Page 184</p>	<p>1 mischaracterizes the document and assumes facts not</p> <p>2 in evidence.</p> <p>3 A. Yes, it is.</p> <p>4 BY MR. BARR:</p> <p>5 Q. And again, let me direct your attention</p> <p>6 to Exhibit 87. This is the January 22, 1996 letter</p> <p>7 from Mr. Honrud.</p> <p>8 MR. WINE: Which exhibit are you</p> <p>9 referring to, Counsel?</p> <p>10 MR. BARR: 87.</p> <p>11 MR. WINE: Objection insofar as it</p> <p>12 mischaracterizes the document.</p> <p>13 A. That's 86, I believe, not 87.</p> <p>14 BY MR. BARR:</p> <p>15 Q. Okay. Thank you. This is a document</p> <p>16 with the first page Bates number is U.S. 0011302?</p> <p>17 A. Yes.</p> <p>18 Q. Would you turn to the last page of this</p> <p>19 Exhibit 86?</p> <p>20 A. Okay.</p> <p>21 MR. BARR: Now, for the record,</p> <p>22 Counsel, I'll represent that the vertical line on</p> <p style="text-align: right;">Page 186</p>

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<p>1 the first page next to the -- on the left next to</p> <p>2 the bottom paragraph and the circle on the last</p> <p>3 page were not on the originals. We will provide</p> <p>4 clean copies for those, both to the reporter and to</p> <p>5 you, at our earliest opportunity.</p> <p>6 BY MR. BARR:</p> <p>7 Q. Mr. Jordan, is this one of the documents</p> <p>8 from which you had derived your conclusion that the</p> <p>9 DCAA had questioned approximately \$300,000 in</p> <p>10 environmental cleanup costs?</p> <p>11 MR. WINE: Objection, it assumes</p> <p>12 facts not in evidence, mischaracterizes the</p> <p>13 document.</p> <p>14 A. Yes, it is.</p> <p>15 MR. WINE: I also object to the line</p> <p>16 of the questions insofar as they exceed the scope</p> <p>17 of the witness' expert report and are, therefore,</p> <p>18 inadmissible.</p> <p>19 BY MR. BARR:</p> <p>20 Q. Let's talk briefly on another subject,</p> <p>21 and that is the extent to which Ryan and TRA</p> <p>22 performed defense subcontracts in the years between</p> <p style="text-align: right;">Page 187</p>	<p>1 Q. Now, back in the '50s and '60s, do you</p> <p>2 recall Ryan producing certain products for other</p> <p>3 prime contractors?</p> <p>4 MR. WINE: Objection, assumes facts</p> <p>5 not in evidence, leading.</p> <p>6 A. There were other prime contractors that</p> <p>7 they produced parts for.</p> <p>8 BY MR. BARR:</p> <p>9 Q. Do you recall the nature of those</p> <p>10 products?</p> <p>11 A. They were primarily aircraft components</p> <p>12 and/or parts for various aircraft.</p> <p>13 Q. Do you recall the nature of those parts?</p> <p>14 MR. WINE: Objection, vague and</p> <p>15 ambiguous.</p> <p>16 A. There were a lot of parts that were high</p> <p>17 temperature alloys such as stainless steel. There</p> <p>18 were other components that were basically sheet</p> <p>19 metal components of the fuselage sections for --</p> <p>20 for example, McDonnell Douglas.</p> <p>21 BY MR. BARR:</p> <p>22 Q. Now, when you say "fuselage sections,"</p> <p style="text-align: right;">Page 189</p>
<p>1 the end of World War II and the site closure in</p> <p>2 1999.</p> <p>3 Briefly stated, what kinds of products</p> <p>4 did you determine the company had produced during</p> <p>5 that period?</p> <p>6 MR. WINE: Objection, assumes facts</p> <p>7 not in evidence.</p> <p>8 A. The documentation that I reviewed as</p> <p>9 part of my review of the documents pertaining to</p> <p>10 this case indicate that Ryan had produced</p> <p>11 components for other manufacturers such as</p> <p>12 manifolds, exhaust components.</p> <p>13 They had a series of contracts with</p> <p>14 General Electric for engine components. They had a</p> <p>15 major subcontract with Hughes and subsequently</p> <p>16 McDonnell Douglas for major structural components</p> <p>17 and fuselage sections for the helicopter being</p> <p>18 produced by Hughes and then subsequently McDonnell</p> <p>19 Douglas.</p> <p>20 BY MR. BARR:</p> <p>21 Q. Was that the Apache helicopter?</p> <p>22 A. Yes, it was.</p> <p style="text-align: right;">Page 188</p>	<p>1 what do you mean?</p> <p>2 A. They were, like, for example, flaps and</p> <p>3 wings sections and the external part of an aircraft</p> <p>4 rather than the internal part of an aircraft.</p> <p>5 Q. What kinds of documents did you find</p> <p>6 this information in?</p> <p>7 A. There were various reports that I read.</p> <p>8 There was correspondence concerning those</p> <p>9 subcontracts, and then there was also documentation</p> <p>10 contained in, for example, the Ryan report to their</p> <p>11 stockholders that spoke to subcontracts.</p> <p>12 Q. Okay. We will get to annual reports</p> <p>13 later. Let me just show you a couple of documents</p> <p>14 and ask you if these are the kinds of documents</p> <p>15 that you have in mind.</p> <p>16 Before we get to that, let me circle</p> <p>17 back. With respect to the issue of reimbursement</p> <p>18 of environmental costs, did you locate in your work</p> <p>19 in the course of this case documents which you feel</p> <p>20 shed additional light on the matter?</p> <p>21 MR. WINE: Objection, vague and</p> <p>22 ambiguous, leading.</p> <p style="text-align: right;">Page 190</p>

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<p>1 A. Yes, I did.</p> <p>2 MR. WINE: Also questions of that</p> <p>3 nature go beyond the scope of this witness' area of</p> <p>4 expertise and are, therefore, inadmissible.</p> <p>5 (Exhibit Nos. 89 and 90 marked)</p> <p>6 BY MR. BARR:</p> <p>7 Q. The court reporter has marked</p> <p>8 Exhibits 89 and 90. And take a moment to review</p> <p>9 those documents. I'll have a couple of questions</p> <p>10 for you.</p> <p>11 MR. WINE: While the witness is</p> <p>12 reviewing the documents, I'll state for the record</p> <p>13 the documents -- there's a lack of foundation for</p> <p>14 the documents. They assume facts not in evidence.</p> <p>15 They constitute hearsay, and they exceed the scope</p> <p>16 of the witness' area of expertise for which he is</p> <p>17 qualified to give an opinion and, therefore,</p> <p>18 inadmissible.</p> <p>19 A. Yes, I have reviewed these documents.</p> <p>20 MR. BARR: And again, for the</p> <p>21 record, it's my understanding that on -- I believe</p> <p>22 it's Exhibit 80 -- 89, the circled material in the</p> <p style="text-align: right;">Page 191</p>	<p>1 A. Yes, I did.</p> <p>2 BY MR. BARR:</p> <p>3 Q. And just to remind the Court,</p> <p>4 Mr. Jordan, did you encounter issues from time to</p> <p>5 time in the course of your career as an Air Force</p> <p>6 contracting official relating to the reimbursement</p> <p>7 of contractor costs?</p> <p>8 A. Yes, I did.</p> <p>9 Q. Often or seldom?</p> <p>10 A. Very frequently.</p> <p>11 MR. WINE: Just a question for</p> <p>12 clarification, are we talking about contractor</p> <p>13 costs or environmental costs?</p> <p>14 MR. BARR: The question stands as it</p> <p>15 is, as -- as does the answer.</p> <p>16 BY MR. BARR:</p> <p>17 Q. Mr. Jordan, what --</p> <p>18 MR. WINE: Then I object.</p> <p>19 BY MR. BARR:</p> <p>20 Q. -- conclusions did you draw?</p> <p>21 A. That costs had to be determined to be</p> <p>22 allowable, allocable, and reasonable before the</p> <p style="text-align: right;">Page 193</p>
<p>1 notes were not on the original. So clean copies of</p> <p>2 those will be provided to the court reporter.</p> <p>3 MR. WINE: I'm not sure I see where</p> <p>4 you're referring to, Counsel. Those are initials?</p> <p>5 MR. BARR: Initials, a date, there's</p> <p>6 some circled information.</p> <p>7 MR. WINE: Do you have a different</p> <p>8 version than I do?</p> <p>9 MR. BARR: Apparently I do. So</p> <p>10 we'll just leave those copies as they are.</p> <p>11 A. Okay.</p> <p>12 BY MR. BARR:</p> <p>13 Q. Mr. Jordan, in the context of</p> <p>14 reimbursement of environmental costs, did you draw</p> <p>15 any conclusions on the basis of these documents?</p> <p>16 MR. WINE: Objection. Again, the</p> <p>17 question goes beyond the scope for which the</p> <p>18 witness has been qualified as an expert. It goes</p> <p>19 beyond his area of expertise and, therefore, is</p> <p>20 inadmissible. Additionally, the question lacks a</p> <p>21 sufficient basis for which the witness can give an</p> <p>22 opinion.</p> <p style="text-align: right;">Page 192</p>	<p>1 government would reimburse the contractor either as</p> <p>2 a direct item of the cost or allow the contractor</p> <p>3 to include those costs in their overhead, which was</p> <p>4 submitted against government contracts.</p> <p>5 Q. And what -- was there a concern relating</p> <p>6 to the nature of those costs or the amount of those</p> <p>7 costs expressed in these documents?</p> <p>8 MR. WINE: Objection, calls for a</p> <p>9 legal conclusion, assumes facts not in evidence,</p> <p>10 goes beyond the scope of the witness' area of</p> <p>11 expertise. It goes beyond the witness' expert</p> <p>12 report as well and is, therefore, inadmissible.</p> <p>13 A. Yes, it does go to the issue of the</p> <p>14 amount of the cost that the contractor was looking</p> <p>15 at.</p> <p>16 BY MR. BARR:</p> <p>17 Q. And -- and what did that concern suggest</p> <p>18 to you?</p> <p>19 A. It concern -- it -- had come to the</p> <p>20 conclusion that they were concerned about the</p> <p>21 excessive costs of waste minimization, and I failed</p> <p>22 to understand what their concern was if these costs</p> <p style="text-align: right;">Page 194</p>

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<p>1 were considered to be those kinds of costs that 2 they would include in their overhead and pass to 3 the government.</p> <p>4 MR. WINE: Objection to the response 5 to the extent it relies upon inadmissible hearsay. 6 BY MR. BARR:</p> <p>7 Q. Now, with respect to the subject of the 8 nature and extent of Ryan and TRA subcontracting 9 work, let me show you a number of documents.</p> <p>10 MR. BARR: Actually, I correct 11 myself. These relate, I believe, to Ryan only, not 12 to TRA.</p> <p>13 MR. WINE: Then I object to 14 relevance. 15 (Exhibit Nos. 91 through 95 marked) 16 BY MR. BARR:</p> <p>17 Q. Mr. Jordan, if you would briefly take a 18 look at those, and when you're done, please let me 19 know if you recall reviewing those in connection 20 with your work on this case.</p> <p>21 MR. WINE: Just for clarification, 22 are you asking with respect to his work on this</p> <p style="text-align: right;">Page 195</p>	<p>1 Q. Let's turn to the subject of government 2 inspectors, contracting officers, auditors, and 3 property administrators.</p> <p>4 First, with respect to government 5 inspectors, have you formed opinions in this case 6 as to what kinds of government inspectors 7 accomplished inspection work at contractors' plants 8 and how they did so?</p> <p>9 MR. WINE: Objection, compound, 10 vague and ambiguous and calls for a narrative.</p> <p>11 A. Yes, I have.</p> <p>12 BY MR. BARR:</p> <p>13 Q. Were the -- within the -- within your 14 experience over the years, were government 15 inspectors military officers or civilian personnel?</p> <p>16 MR. WINE: Objection to the extent 17 that it calls for periods that go beyond the area 18 of expertise of the witness. It is outside of his 19 scope of knowledge and, therefore, inadmissible 20 opinion testimony.</p> <p>21 A. Those inspectors that I came in contact 22 with during my career were all civilian employees</p> <p style="text-align: right;">Page 197</p>
<p>1 case or his formulation of his expert opinions in 2 this matter? Because he's also been designated as 3 a 30(b)(6) witness.</p> <p>4 MR. BARR: In connection with his 5 expert work.</p> <p>6 MR. WINE: Okay. While the witness 7 is reviewing, I'll state for the record: To the 8 extent the documents are not reflected in the 9 expert report, we would object to their admission 10 and inclusion in testimony as going beyond the 11 scope of that report and, therefore, inadmissible. 12 Additionally, the documents constitute hearsay and 13 have no relevance to this matter and are, 14 therefore -- and we object as such.</p> <p>15 A. These are among the documents that I did 16 review.</p> <p>17 BY MR. BARR:</p> <p>18 Q. Now, Mr. Jordan, are these the kinds of 19 reports from which you derived information 20 concerning the nature and extent of the companies 21 of Ryan's subcontract work?</p> <p>22 A. These and others, yes.</p> <p style="text-align: right;">Page 196</p>	<p>1 of the Federal government.</p> <p>2 BY MR. BARR:</p> <p>3 Q. Did you ever hear about inspectors who 4 were military officers?</p> <p>5 MR. WINE: Same objection.</p> <p>6 A. I never heard about an inspector being a 7 military officer.</p> <p>8 BY MR. BARR:</p> <p>9 Q. And as civilians, how would they dress 10 when they went to contractors' plants?</p> <p>11 A. They would dress in civilian clothes and 12 unless you were personally familiar with the 13 inspectors, they were virtually indistinguishable 14 from contractor inspectors.</p> <p>15 Q. And do you have a recollection as -- in 16 the course of your career, as to how they performed 17 their duties relating to inspection?</p> <p>18 MR. WINE: Objection, vague and 19 ambiguous.</p> <p>20 A. Yes, I do. I have a definite opinion 21 based upon my personal experience and observation.</p> <p>22 BY MR. BARR:</p> <p style="text-align: right;">Page 198</p>

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<p>1 Q. And what is that opinion?</p> <p>2 A. They relied primarily upon review of</p> <p>3 contractor records of inspections that had been</p> <p>4 accomplished by the contractor's inspectors. They</p> <p>5 periodically, either on a random sample or</p> <p>6 statistical sampling basis, would physically</p> <p>7 inspect product that was being produced by the</p> <p>8 contractor to confirm that the contractor's record</p> <p>9 of inspections were complete and accurate.</p> <p>10 And then prior to final acceptance of</p> <p>11 the product, they would review all of the</p> <p>12 contractor documentation that had been prepared as</p> <p>13 that product went through the various stages of</p> <p>14 manufacturing and the various processes to ensure</p> <p>15 that everything had been done properly before they</p> <p>16 executed a document called a DD 250, which was a</p> <p>17 material inspection and receiving report, which</p> <p>18 authorized the contractor to receive payment for</p> <p>19 that product.</p> <p>20 Q. Now, are you aware of any evidence that</p> <p>21 government inspectors at Ryan during World War II</p> <p>22 did their business any differently from the way</p> <p style="text-align: right;">Page 199</p>	<p>1 witness' area of expertise, lacks an appropriate</p> <p>2 foundation. To the extent it's not -- it requests</p> <p>3 an opinion not articulated in the witness' expert</p> <p>4 report it is ad -- is inadmissible. It also</p> <p>5 contains undefined terms and is, therefore, vague</p> <p>6 and ambiguous.</p> <p>7 A. All the documentation that I reviewed</p> <p>8 pertaining to this issue indicate that there was</p> <p>9 no -- none, whatsoever -- indication that the</p> <p>10 government employees, either inspectors or</p> <p>11 contract -- contracting officers directed the</p> <p>12 contractor to do anything outside the scope and</p> <p>13 breadth of contracts that existed between the</p> <p>14 government and the contractor.</p> <p>15 BY MR. BARR:</p> <p>16 Q. Well, let me focus it just more</p> <p>17 precisely. Did you determine on your review of</p> <p>18 documents whether or not any government contracting</p> <p>19 or inspection personnel during the war supervised</p> <p>20 or directed any of the actual day-to-day</p> <p>21 manufacturing or processes at the plant?</p> <p>22 MR. WINE: Same objections.</p> <p style="text-align: right;">Page 201</p>
<p>1 they did their business during your time?</p> <p>2 MR. WINE: Objection to the extent</p> <p>3 that it goes beyond the witness' area of expertise,</p> <p>4 beyond -- and predates his period of work with the</p> <p>5 United States. He is not qualified to give an</p> <p>6 opinion in this matter on that time frame.</p> <p>7 A. All the documents that I reviewed</p> <p>8 indicate that the duties and responsibilities of</p> <p>9 government inspectors remained substantially the</p> <p>10 same from World War II era through the end of the</p> <p>11 relevant period.</p> <p>12 BY MR. BARR:</p> <p>13 Q. Now, broadening our focus a little bit</p> <p>14 here to include government contracting personnel,</p> <p>15 did you determine in your review of documents in</p> <p>16 this case whether any government contracting or</p> <p>17 inspection personnel during World War II supervised</p> <p>18 or directed Ryan employees or executives concerning</p> <p>19 the actual day-to-day manufacturing operations or</p> <p>20 processes at the plant?</p> <p>21 MR. WINE: Objection, calls for a</p> <p>22 legal conclusion, goes beyond the scope of the</p> <p style="text-align: right;">Page 200</p>	<p>1 A. There was no documentation that I found</p> <p>2 that indicated that the government employees had</p> <p>3 supervised contractor employees or directed</p> <p>4 supervisor or contractor management to do anything</p> <p>5 outside the contract.</p> <p>6 BY MR. BARR:</p> <p>7 Q. And that would include -- am I</p> <p>8 understanding you correctly that they would not be</p> <p>9 supervising the day-to-day operations or processes?</p> <p>10 MR. WINE: Objection, leading, same</p> <p>11 objections as before.</p> <p>12 A. That is correct. There was no</p> <p>13 day-to-day supervision of contractor employees</p> <p>14 during the processing of the product.</p> <p>15 BY MR. BARR:</p> <p>16 Q. Did your determine in your review of</p> <p>17 documents in this case whether or not any</p> <p>18 government contracting or inspection personnel</p> <p>19 during the war supervised or directed Ryan</p> <p>20 personnel as to the day-to-day usage of chemicals</p> <p>21 by company personnel?</p> <p>22 MR. WINE: Same objections.</p> <p style="text-align: right;">Page 202</p>

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<p>1 A. There was no documentation that I saw</p> <p>2 that indicated that government employees had</p> <p>3 supervised the manner in which Ryan and/or TDY used</p> <p>4 hazardous chemicals in the day-to-day processing of</p> <p>5 the product.</p> <p>6 BY MR. BARR:</p> <p>7 Q. And did you determine in your review of</p> <p>8 documents in this case whether or not any</p> <p>9 government contracting or inspection personnel</p> <p>10 during World War II supervised or directed Ryan</p> <p>11 personnel concerning methods or facilities for the</p> <p>12 disposal of chemical waste generated during</p> <p>13 operations at the plant?</p> <p>14 MR. WINE: Same objections as</p> <p>15 before, and to state a point that hasn't been</p> <p>16 previously raised, the witness is not qualified as</p> <p>17 a historian and has made previous testimony that he</p> <p>18 is not qualified as a historian and, therefore, to</p> <p>19 the extent that the question calls for historical</p> <p>20 testimony, he is not qualified at all for an</p> <p>21 opinion in that regard.</p> <p>22 A. There is no documentation that I saw</p> <p style="text-align: right;">Page 203</p>	<p>1 inspectors, in summary, what is your</p> <p>2 understanding -- based on your experience and</p> <p>3 training and review of documents in this case, what</p> <p>4 would -- how would you summarize their essential</p> <p>5 responsibilities?</p> <p>6 MR. WINE: Objection. Same</p> <p>7 objections as before. Also goes beyond the scope</p> <p>8 of the witness' expert report and is, therefore,</p> <p>9 inadmissible.</p> <p>10 A. Their basic duties or responsibilities</p> <p>11 were to assure that the government received that</p> <p>12 which it had contracted for. It had the</p> <p>13 prerequisite safety, reliability, and in all</p> <p>14 aspects complied with the contracts between the</p> <p>15 government and the contractors.</p> <p>16 BY MR. BARR:</p> <p>17 Q. Would the Court be correct in</p> <p>18 understanding that these responsibilities related</p> <p>19 to the end product?</p> <p>20 MR. WINE: Objection, leading.</p> <p>21 A. That is correct.</p> <p>22 BY MR. BARR:</p> <p style="text-align: right;">Page 205</p>
<p>1 during World War II period that indicated that the</p> <p>2 government had supervised any action relative to</p> <p>3 the handling and/or disposal of hazardous</p> <p>4 materials.</p> <p>5 BY MR. BARR:</p> <p>6 Q. And did you determine in your review of</p> <p>7 documents in this case whether or not any</p> <p>8 government contracting or inspection personnel</p> <p>9 during the war supervised or directed Ryan</p> <p>10 personnel concerning the handling of any PCB fluids</p> <p>11 that may have been discharged from any plant</p> <p>12 equipment?</p> <p>13 MR. WINE: Same objections.</p> <p>14 A. I saw no documentation in the volumes of</p> <p>15 documents that I reviewed that indicated that the</p> <p>16 government in any way, shape, form, or fashion had</p> <p>17 issued instructions to the contractor relative to</p> <p>18 the handling of PCB waste.</p> <p>19 BY MR. BARR:</p> <p>20 Q. Now, the personnel that we've been</p> <p>21 discussing in the context of World War II,</p> <p>22 government contracting officers and government</p> <p style="text-align: right;">Page 204</p>	<p>1 Q. And what aspect of the end product would</p> <p>2 these personnel be focused upon?</p> <p>3 MR. WINE: Same as prior objections.</p> <p>4 A. The degree to which they complied with</p> <p>5 the terms and conditions of the contract and all</p> <p>6 the specifications that were incorporated into</p> <p>7 those contracts.</p> <p>8 BY MR. BARR:</p> <p>9 Q. Are you familiar with the term "end</p> <p>10 product"?</p> <p>11 A. Yes, I am.</p> <p>12 Q. What does that mean in the scope of your</p> <p>13 experience?</p> <p>14 A. It is the product that was specifically</p> <p>15 identified in the contract to be delivered to the</p> <p>16 government.</p> <p>17 Q. And would that focus include the</p> <p>18 processes used in the manufacturing?</p> <p>19 A. It would include the processes that were</p> <p>20 used by the contractor to produce that product up</p> <p>21 to the point where it was ready for presentation to</p> <p>22 the government for inspection and acceptance.</p> <p style="text-align: right;">Page 206</p>

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<p>1 Q. In terms of end product characteristics,</p> <p>2 what kind of characteristics would the government</p> <p>3 personnel be concerned with?</p> <p>4 MR. WINE: Objection, vague and</p> <p>5 ambiguous, calls for a legal conclusion.</p> <p>6 A. They would be concerned with the degree</p> <p>7 to which the contractor complied with the</p> <p>8 specifications. They would be concerned with the</p> <p>9 safety, strength, reliability of the product, and</p> <p>10 whether or not it would satisfy its intended</p> <p>11 military usage.</p> <p>12 They would be concerned with the</p> <p>13 baseline that had been established by mutual</p> <p>14 agreement prior to contract award as to the</p> <p>15 technical -- or technological facets of the product</p> <p>16 that had to be completed prior to delivery to the</p> <p>17 government.</p> <p>18 They would be considered with such</p> <p>19 things as standardization and predictability of</p> <p>20 form, fit, and function. They would be concerned</p> <p>21 with whether or not the specifications that had</p> <p>22 been incorporated into the contract were, in fact,</p> <p style="text-align: right;">Page 207</p>	<p>1 the context of Ryan or during World War II?</p> <p>2 MR. WINE: Objection, vague, lacks</p> <p>3 foundation, goes beyond the area of expertise and</p> <p>4 scope of the witness, asks for an opinion that goes</p> <p>5 beyond the scope of the witness' expert report and</p> <p>6 is, therefore, inadmissible.</p> <p>7 BY MR. BARR:</p> <p>8 Q. Mr. Jordan, did you encounter any</p> <p>9 evidence in this case that would indicate that the</p> <p>10 functions and scope of things that the government</p> <p>11 personnel would consider during World War II was</p> <p>12 any different then than in the post-war period?</p> <p>13 MR. WINE: Same objections, also</p> <p>14 vague and ambiguous as to whether Counsel is</p> <p>15 referring to an absence of fact or facts confirming</p> <p>16 the prior opinions.</p> <p>17 A. Based upon the volume of documents that</p> <p>18 I reviewed, my opinion is it would be the same</p> <p>19 during World War II and subsequent to World War II</p> <p>20 is my general impression.</p> <p>21 BY MR. BARR:</p> <p>22 Q. When you say your general impression,</p> <p style="text-align: right;">Page 209</p>
<p>1 complied with and the contractor had, in all</p> <p>2 material aspects, complied with the contract.</p> <p>3 BY MR. BARR:</p> <p>4 Q. Now, was this -- was -- the description</p> <p>5 you've just given, was that true to the best of</p> <p>6 your -- based on what you've been able to</p> <p>7 determine, was that true both during World War II</p> <p>8 and in the post-war period?</p> <p>9 MR. WINE: Are you talking in</p> <p>10 general or with respect to the Ryan site, Counsel?</p> <p>11 MR. BARR: Off the record.</p> <p>12 THE VIDEOGRAPHER: Going off the</p> <p>13 record, 10:43.</p> <p>14 (Recess: 10:43 a.m. to 10:44 a.m.)</p> <p>15 THE VIDEOGRAPHER: Back on the</p> <p>16 record, 10:44.</p> <p>17 BY MR. BARR:</p> <p>18 Q. Mr. Jordan, the answer that you just</p> <p>19 gave, was that speaking in general terms?</p> <p>20 A. Based upon my training and personal</p> <p>21 experience, yes, in general terms.</p> <p>22 Q. Would your answer be any different in</p> <p style="text-align: right;">Page 208</p>	<p>1 you --</p> <p>2 A. That was stated earlier.</p> <p>3 Q. Okay. And when you said "general</p> <p>4 impression," are those your -- is that -- are those</p> <p>5 your opinions in the post -- as to the post-war</p> <p>6 period?</p> <p>7 A. Yes, it is.</p> <p>8 Q. Now, did you determine in your review of</p> <p>9 documents in this case whether or not any</p> <p>10 government personnel in the post-war period after</p> <p>11 World War II had any responsibility for determining</p> <p>12 what had caused a product to be not in conformance</p> <p>13 with the requirements of a contract?</p> <p>14 MR. WINE: Objection, vague and</p> <p>15 ambiguous. Yeah, I'm --</p> <p>16 A. I found no evidence that the government</p> <p>17 at any point in time had rejected a product because</p> <p>18 it had determined that a product was not in</p> <p>19 conformance with the contract.</p> <p>20 BY MR. BARR:</p> <p>21 Q. Okay. We may have misunderstood one</p> <p>22 other. Generally speaking, with respect to --</p> <p style="text-align: right;">Page 210</p>

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<p>1 based on your background and training in the</p> <p>2 post-war period, did you determine whether or not</p> <p>3 any government personnel had responsibilities for</p> <p>4 determining what had caused a contractor's product</p> <p>5 to be not in conformance with the prod --</p> <p>6 requirements of a contract?</p> <p>7 MR. WINE: Objection, assumes facts</p> <p>8 not in evidence.</p> <p>9 A. Their response --</p> <p>10 MR. WINE: And it lacks foundation.</p> <p>11 A. Their responsibilities were not</p> <p>12 necessarily to determine what had caused the</p> <p>13 nonconformance, but to identify those products were</p> <p>14 in nonconformance with the terms and conditions of</p> <p>15 the contract.</p> <p>16 BY MR. BARR:</p> <p>17 Q. Whose responsibility was it to determine</p> <p>18 the cause of nonconformance?</p> <p>19 MR. WINE: Objection, calls for a</p> <p>20 legal conclusion.</p> <p>21 A. It was the contractor's responsibility</p> <p>22 based upon the responsibilities of the contractor</p> <p style="text-align: right;">Page 211</p>	<p>1 assumes facts not in evidence, foundation.</p> <p>2 BY MR. BARR:</p> <p>3 Q. Did you -- did you encounter such</p> <p>4 evidence, Mr. Jordan?</p> <p>5 A. At other manufacturers' plants during</p> <p>6 World War II, I don't recall seeing that.</p> <p>7 Q. Mr. Jordan, I'm going to show you two</p> <p>8 additional exhibits.</p> <p>9 (Exhibit Nos. 96 and 97 marked)</p> <p>10 MR. WINE: While the witness is</p> <p>11 reviewing, given the date of the documents, because</p> <p>12 the witness has not been qualified as a historian,</p> <p>13 the witness is not qualified to give an opinion on</p> <p>14 this matter. Also to the extent that the documents</p> <p>15 are not referenced in or relied upon in the</p> <p>16 witness' expert report and go beyond the scope of</p> <p>17 that report, they are inadmissible.</p> <p>18 A. I misspoke in my prior answer. I did</p> <p>19 review both of these documents, and they do</p> <p>20 indicate that the government had inspectors at</p> <p>21 other contractor facilities.</p> <p>22 BY MR. BARR:</p> <p style="text-align: right;">Page 213</p>
<p>1 to conduct inspections of the product at all points</p> <p>2 during the manufacturing process.</p> <p>3 BY MR. BARR:</p> <p>4 Q. Now, did you encounter any evidence with</p> <p>5 respect to the World War II period whether any</p> <p>6 government personnel had such responsibilities for</p> <p>7 determining what had caused a product to be not in</p> <p>8 conformance with the terms of a contract?</p> <p>9 MR. WINE: Objection, vague and</p> <p>10 ambiguous, assumes facts not in evidence, lacks a</p> <p>11 legal foundation, and calls for a legal conclusion.</p> <p>12 A. Based upon the documents that I</p> <p>13 reviewed, I saw no such evidence.</p> <p>14 BY MR. BARR:</p> <p>15 Q. And this is in the context of Ryan.</p> <p>16 Correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Now, did you encounter evidence relating</p> <p>19 to the presence of inspection personnel at other</p> <p>20 war plants or other defense contractors during</p> <p>21 World War II?</p> <p>22 MR. WINE: Objection, relevance,</p> <p style="text-align: right;">Page 212</p>	<p>1 Q. Now, as of the time of -- that World</p> <p>2 War II broke out -- and again, I want to harken</p> <p>3 back to your training as a contracting officer.</p> <p>4 Did you learn whether or not government</p> <p>5 inspection of what contractors delivered was a new</p> <p>6 phenomenon or not?</p> <p>7 MR. WINE: Objection, vague and</p> <p>8 ambiguous, unintelligible. Again, the witness has</p> <p>9 not been qualified as a historian, and to the</p> <p>10 extent that Counsel is asking questions about what</p> <p>11 would -- occurred during the World War II period</p> <p>12 and that predated his government employment by over</p> <p>13 a decade, the witness is not qualified to offer an</p> <p>14 opinion on that time frame.</p> <p>15 A. Based upon my training, I was made aware</p> <p>16 of specific instances where the government had</p> <p>17 employed inspection of products decades before the</p> <p>18 beginning of World War II.</p> <p>19 MR. BARR: And let me show you a</p> <p>20 document that we'll mark as the next in order.</p> <p>21 (Exhibit No. 98 marked)</p> <p>22 BY MR. BARR:</p> <p style="text-align: right;">Page 214</p>

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<p>1 Q. And I'll ask you if you recognize that</p> <p>2 document?</p> <p>3 MR. WINE: Objection regarding the</p> <p>4 relevance.</p> <p>5 A. This is one of the contracts that I</p> <p>6 became aware of during my training. It is a</p> <p>7 contract between the Signal Corps of the United</p> <p>8 States Army and the Wright brothers for one</p> <p>9 heavier-than-air aircraft. It was the first flying</p> <p>10 machine, if you will, procured by the government.</p> <p>11 BY MR. BARR:</p> <p>12 Q. Does it refer to the use of inspection</p> <p>13 by government personnel?</p> <p>14 A. Under Article 3, it says, "All supplies,</p> <p>15 materials, furnished and work done under this</p> <p>16 contract shall, before being accepted, be subject</p> <p>17 to a rigid inspection by an inspector appointed</p> <p>18 by -- on the part of the government and such</p> <p>19 as do -- as do not conform to the specifications,</p> <p>20 this contract shall be rejected."</p> <p>21 MR. WINE: Objection. The document</p> <p>22 speaks for itself. Also, Counsel, do you have a</p> <p style="text-align: right;">Page 215</p>	<p>1 contain Bates labels and exhibit numbers from other</p> <p>2 litigation.</p> <p>3 To the extent that the documents are</p> <p>4 not referred to or relied upon by the witness in</p> <p>5 his expert report, they go beyond the scope of that</p> <p>6 report. We'd object on that basis. Because they</p> <p>7 deal with time periods that predate his federal</p> <p>8 service employment, the witness lacks qualification</p> <p>9 to give an opinion on the basis of these documents.</p> <p>10 A. Yes, I have reviewed these documents.</p> <p>11 BY MR. BARR:</p> <p>12 Q. Were these documents that you reviewed</p> <p>13 in the course of your expert work in this case?</p> <p>14 A. Yes, and I specifically believe that</p> <p>15 Exhibit No. 99 was referenced in my expert report.</p> <p>16 Insofar as --</p> <p>17 Q. In fact, we believe they were all</p> <p>18 referenced, but that -- that will be for another</p> <p>19 day.</p> <p>20 Now, without referencing or without</p> <p>21 digging out the World War II contracts between the</p> <p>22 military and Ryan during World War II, in your</p> <p style="text-align: right;">Page 217</p>
<p>1 Bates -- Bates labeled version of this document?</p> <p>2 MR. BARR: I do not.</p> <p>3 MR. WINE: We move for its exclusion</p> <p>4 on that basis, as it was not produced in the</p> <p>5 discovery in this matter.</p> <p>6 MR. BARR: It was -- it was</p> <p>7 referenced, certainly, in Mr. Jordan's report, and</p> <p>8 we can provide a Bates numbered copy.</p> <p>9 BY MR. BARR:</p> <p>10 Q. Now, Mr. Jordan, are there documents</p> <p>11 that you have encountered or reviewed in the course</p> <p>12 of your expert work in this case that pertain to</p> <p>13 the duties and responsibilities of government</p> <p>14 inspectors during World War II?</p> <p>15 MR. WINE: Objection, vague and</p> <p>16 ambiguous.</p> <p>17 A. Yes.</p> <p>18 (Exhibit Nos. 99 through 101 marked)</p> <p>19 MR. WINE: While the witness is</p> <p>20 reviewing the documents, I'll state for the record</p> <p>21 we object to the documents on the basis of</p> <p>22 foundation, completeness. The documents appear to</p> <p style="text-align: right;">Page 216</p>	<p>1 opinion and based on your experience and training,</p> <p>2 do these contracts indicate that these kinds of</p> <p>3 policies and procedures as far as government</p> <p>4 inspectors are concerned were followed in the</p> <p>5 dealings between the military and Ryan?</p> <p>6 MR. WINE: Objection, compound,</p> <p>7 calls for a legal conclusion, vague and ambiguous,</p> <p>8 goes beyond the opinions articulated in the expert</p> <p>9 report and are, therefore, inadmissible.</p> <p>10 A. Based upon the documents that I</p> <p>11 reviewed, the duties and responsibilities of</p> <p>12 government inspectors remained constant throughout</p> <p>13 the entire period of -- the relevant period from</p> <p>14 World War II subsequently.</p> <p>15 MR. BARR: Mr. Jordan, let me show</p> <p>16 you an additional document dated October 2, 1940.</p> <p>17 (Exhibit No. 102 marked)</p> <p>18 BY MR. BARR:</p> <p>19 Q. And I'll ask you to review that, please.</p> <p>20 MR. WINE: While the witness is</p> <p>21 reviewing the document, I'll object on the basis --</p> <p>22 on the basis that it exceeds the scope of his area</p> <p style="text-align: right;">Page 218</p>

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<p>1 of expertise, calls for hearsay testimony, lack of 2 foundation, relevance.</p> <p>3 A. I have reviewed this document.</p> <p>4 BY MR. BARR:</p> <p>5 Q. Now, can you briefly, without 6 summarizing the contents, since the document will 7 speak for itself -- but can you briefly summarize 8 what this document relates to?</p> <p>9 MR. WINE: Same objections.</p> <p>10 A. It relates to the poor performance of an 11 engine that had been included -- incorporated into 12 one of the aircraft produced by Ryan and the 13 subsequent determination that there was a better 14 engine for that aircraft available.</p> <p>15 MR. WINE: Object to the response to 16 the extent it mischaracterizes the document. The 17 document speaks for itself. To the extent that the 18 witness has attempted to characterize the document, 19 such testimony is impermissible.</p> <p>20 BY MR. BARR:</p> <p>21 Q. Mr. Jordan, does the document, in your 22 opinion, tell us anything regarding what these --</p> <p style="text-align: right;">Page 219</p>	<p>1 experience and on your review of documents and 2 testimony in this case, have you formed an opinion 3 as to the basic purposes of military inspection 4 between the end of World War II and 1999?</p> <p>5 MR. WINE: Objection to the extent 6 the opinion being elicited from the witness either 7 exceeds or is not reflected in his expert report 8 and, therefore, is inadmissible. Moreover, I 9 object that opinion is not formulated or necessary 10 to assist the finder of fact and is, therefore, not 11 a proper area of testimony or opinion for an expert 12 in this matter.</p> <p>13 A. Yes, I have formed an opinion.</p> <p>14 BY MR. BARR:</p> <p>15 Q. And what is that opinion?</p> <p>16 A. The documents that I have reviewed in my 17 experience indicate that in the post-World War II 18 period, the purpose and intent of government 19 inspection was essentially the same as it has been 20 in that period during World War II, and that was to 21 ensure that the products produced by the contractor 22 met the specification and intent of the contracts</p> <p style="text-align: right;">Page 221</p>
<p>1 regarding what any resident military inspectors did 2 at the Ryan plant?</p> <p>3 MR. WINE: Objection, the document 4 speaks for itself, calls for hearsay testimony that 5 is inadmissible through this witness.</p> <p>6 A. They conducted some tests on the engine 7 and determined that it had been -- based upon its 8 performance in the field and the cost of supporting 9 that engine through repair, subsequent delivery was 10 excessive. That the engine that had been 11 incorporated in the first aircraft delivered was 12 not acceptable to the government.</p> <p>13 MR. WINE: Object to the response to 14 the extent it mischaracterizes the document and 15 assumes facts not in evidence. The document speaks 16 for extent -- itself. To the extent that the 17 witness is attempting to characterize the document, 18 such testimony is impermissible.</p> <p>19 BY MR. BARR:</p> <p>20 Q. Okay. Let's turn our focus, if we can, 21 to the post-World War II period. And my first 22 question in this regard is: Based on your</p> <p style="text-align: right;">Page 220</p>	<p>1 between the contractor and the government.</p> <p>2 Q. And you mentioned the documents. Let me 3 show you a group of additional exhibits that we'll 4 mark for purposes of your testimony, and after 5 you've reviewed them briefly, I'll ask you if these 6 are documents that you reviewed in the course of 7 your expert work in this matter.</p> <p>8 (Exhibit Nos. 103 through 108 9 marked)</p> <p>10 BY MR. BARR:</p> <p>11 Q. All right. Mr. Jordan, if you would, 12 please take a look -- look at those exhibits and 13 let us know when you're finished.</p> <p>14 MR. WINE: While the witness is 15 reviewing the documents, we'll object, as we have 16 before, to this series of documents as lacking a 17 foundation, containing hearsay. It is not 18 admissible via this witness.</p> <p>19 To the extent that the documents 20 provided to Counsel and to the witness labeled 21 Jordan Exhibits 103 through 108 are not reflected 22 in the witness' expert report, they are, therefore,</p> <p style="text-align: right;">Page 222</p>

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<p>1 outside of the scope of that report and are</p> <p>2 inadmissible on that -- on that basis. I also</p> <p>3 object on the basis of relevance.</p> <p>4 A. These are among the documents that I</p> <p>5 reviewed in order for me to come up with my</p> <p>6 opinion.</p> <p>7 BY MR. BARR:</p> <p>8 Q. And just so the record is clear, the</p> <p>9 opinions you just expressed related to the purpose</p> <p>10 and activities of military inspectors. Is that</p> <p>11 correct?</p> <p>12 MR. WINE: In general or at -- at</p> <p>13 the Ryan site?</p> <p>14 MR. BARR: Generally speaking.</p> <p>15 MR. WINE: Objection, relevance,</p> <p>16 then.</p> <p>17 BY MR. BARR:</p> <p>18 Q. Is that correct?</p> <p>19 A. That is correct.</p> <p>20 Q. Do you have any reason to think that any</p> <p>21 military personnel at the Ryan plant or what became</p> <p>22 the TRA plant conducted themselves in a manner</p> <p style="text-align: right;">Page 223</p>	<p>1 the nature of their job?</p> <p>2 MR. WINE: With respect to general</p> <p>3 government contracting or at the Ryan site?</p> <p>4 MR. BARR: Both.</p> <p>5 MR. WINE: Then compound, objection.</p> <p>6 A. The auditors -- let me back up. DCAA,</p> <p>7 the Defense Contract Audit Agency, is a completely</p> <p>8 separate agency from the Defense Contract</p> <p>9 Management Agency or the administrative contracting</p> <p>10 officers inspectors work. They report through an</p> <p>11 entirely different chain of command up through the</p> <p>12 Department of Defense.</p> <p>13 Based upon my personal experience, they</p> <p>14 were primarily accountants and auditors, and their</p> <p>15 duties and responsibilities were to evaluate the</p> <p>16 contractors' cost submissions to make sure that</p> <p>17 they were in compliance with the -- both the truth</p> <p>18 in negotiations and the accounting standards that</p> <p>19 existed at -- at the various points in time.</p> <p>20 BY MR. BARR:</p> <p>21 Q. Now, in the course of your career, did</p> <p>22 you become familiar with various property</p> <p style="text-align: right;">Page 225</p>
<p>1 contrary to these documents?</p> <p>2 MR. WINE: Objection, calls for</p> <p>3 speculation, lack of foundation, assumes facts not</p> <p>4 in evidence.</p> <p>5 A. I saw no documentation that indicated</p> <p>6 that any behavior or performance of government</p> <p>7 inspectors -- and they were civilian inspectors,</p> <p>8 not military inspectors to the best of my</p> <p>9 knowledge -- behaved any differently than</p> <p>10 envisioned by these documents.</p> <p>11 BY MR. BARR:</p> <p>12 Q. Now, we had spoken earlier about</p> <p>13 procuring contracting officers and you held that</p> <p>14 position and we also spoke earlier about</p> <p>15 administrative contracting officers.</p> <p>16 From time to time, there's been</p> <p>17 considerable discussion in this case regarding</p> <p>18 defense contract audit agency personnel. Do you</p> <p>19 recall that we --</p> <p>20 A. Yes, I do.</p> <p>21 Q. Essentially, what was -- what were these</p> <p>22 defense contract audit agency personnel? What was</p> <p style="text-align: right;">Page 224</p>	<p>1 administrators over time?</p> <p>2 MR. WINE: Objection, vague and</p> <p>3 ambiguous.</p> <p>4 A. Yes, I did.</p> <p>5 BY MR. BARR:</p> <p>6 Q. And what were property administrators?</p> <p>7 Were these government personnel?</p> <p>8 A. The property administrator was a</p> <p>9 government employee who worked under the auspices</p> <p>10 of the Defense Contract Management Agency, or</p> <p>11 DCASR, if you will, prior to the -- becoming an</p> <p>12 agency.</p> <p>13 Q. I'm sorry. Let me stop you there. Was</p> <p>14 that DCAS?</p> <p>15 A. D-C -- DCASR, D-C-A-S-R, it was a</p> <p>16 region -- it was a region initially, and then it</p> <p>17 became an agency, DCMA, Defense Contract Management</p> <p>18 Agency. And I don't remember exactly when it</p> <p>19 became a separate agency, but within the last 15 or</p> <p>20 20 years. Initially it was under the Defense</p> <p>21 Supply Agency and then they moved it to a separate</p> <p>22 agency that reported directly to the Department of</p> <p style="text-align: right;">Page 226</p>

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<p>1 Defense.</p> <p>2 Q. Now, on the basis of your knowledge and</p> <p>3 experience during the course of your career, what</p> <p>4 essentially were the duties of property</p> <p>5 administrators?</p> <p>6 A. It was to review the contractors'</p> <p>7 written records of all government property and to</p> <p>8 make sure that the contractor had a good system for</p> <p>9 accountability of that property that had been</p> <p>10 provided to the contractor, the government</p> <p>11 furnished property.</p> <p>12 Q. Okay. I believe we'll come back to</p> <p>13 property administrators in a little while. Let me</p> <p>14 shift back, if I can, to federal inspection</p> <p>15 personnel. And if I slip up every now and then and</p> <p>16 call them military inspection personnel, we'll all</p> <p>17 understand that these were civilians in -- working</p> <p>18 on behalf of the military?</p> <p>19 A. Yeah.</p> <p>20 MR. WINE: Objection, assumes facts</p> <p>21 not in evidence.</p> <p>22 BY MR. BARR:</p> <p style="text-align: right;">Page 227</p>	<p>1 marked)</p> <p>2 MR. WINE: For the record, with</p> <p>3 respect --</p> <p>4 MR. BARR: Well -- okay. Go ahead.</p> <p>5 MR. WINE: For the record, with</p> <p>6 respect to the documents Counsel has marked as</p> <p>7 Jordan Exhibits 109 through 123, TDY will assert</p> <p>8 the same objections it asserted in day one of</p> <p>9 Mr. Jordan's deposition regarding excerpts taken</p> <p>10 from ASPR's related regulations and assert them as</p> <p>11 made at the time -- at this time now.</p> <p>12 BY MR. BARR:</p> <p>13 Q. Mr. Jordan, just a quick question. When</p> <p>14 you needed to refer to an ASPR provision during the</p> <p>15 course of your career, did you review the entire</p> <p>16 set of ASPR volumes?</p> <p>17 A. No, I did not. I reviewed only that</p> <p>18 portion of the procurement and regulation that</p> <p>19 pertained to the issue that I was concerned with at</p> <p>20 that particular point in time.</p> <p>21 MR. BARR: All right. Let's take</p> <p>22 our first break.</p> <p style="text-align: right;">Page 229</p>
<p>1 Q. Is what I just said a correct statement,</p> <p>2 Mr. Jordan?</p> <p>3 A. That is correct.</p> <p>4 MR. WINE: Same objection.</p> <p>5 MR. BARR: Okay. Let's mark this</p> <p>6 next group of exhibits. Then we can take our first</p> <p>7 break.</p> <p>8 BY MR. BARR:</p> <p>9 Q. Before I do that, Mr. Jordan, is it your</p> <p>10 understanding or do you believe that your opinions</p> <p>11 regarding the duties and responsibilities of</p> <p>12 government -- of civilian inspection personnel at</p> <p>13 both Ryan, TRA, and other defense contractors are</p> <p>14 supported by ASPR provisions?</p> <p>15 MR. WINE: Objection, calls for a</p> <p>16 legal conclusion, assumes facts not in evidence,</p> <p>17 leading. It goes beyond the scope of the witness'</p> <p>18 expert report.</p> <p>19 A. Based upon my experience and documents</p> <p>20 that I have reviewed, yes, they are based upon</p> <p>21 provisions of ASPR.</p> <p>22 (Exhibit Nos. 109 through 123</p> <p style="text-align: right;">Page 228</p>	<p>1 THE VIDEOGRAPHER: We're going off</p> <p>2 the record, 11:20.</p> <p>3 (Recess: 11:20 a.m. 11:34 a.m.)</p> <p>4 THE VIDEOGRAPHER: Back on record at</p> <p>5 11:34.</p> <p>6 BY MR. BARR:</p> <p>7 Q. All right. Let's continue on.</p> <p>8 Mr. Jordan, to follow up on the last question I</p> <p>9 asked you just before our break, when the Justice</p> <p>10 Department, in the course of your work on this</p> <p>11 case, has sent you various excerpts of the ASPRs</p> <p>12 and the FARs on various topics, have you ever asked</p> <p>13 us -- or ever advised us that you needed additional</p> <p>14 excerpts from other parts of the ASPRs or FARs to</p> <p>15 make sense of what we had sent you?</p> <p>16 A. No, I did not.</p> <p>17 Q. Now, based on your training and</p> <p>18 experience, the ASPR provisions -- the excerpts</p> <p>19 that we've just marked, do these experts --</p> <p>20 experts -- excuse me. Do these excerpts reflect</p> <p>21 the inspection clauses for contracts during the</p> <p>22 period of essentially 1948 through 1976?</p> <p style="text-align: right;">Page 230</p>

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<p>1 MR. WINE: Objection. The set of</p> <p>2 documents provided is incomplete for that period.</p> <p>3 Additionally, the documents speak for themselves,</p> <p>4 lack of foundation. The clauses are also</p> <p>5 particular to certain types of contracts that may</p> <p>6 or may not be at issue in this case.</p> <p>7 A. Yes, they do.</p> <p>8 BY MR. BARR:</p> <p>9 Q. Mr. Jordan, as you reviewed the</p> <p>10 excerpts, do they pertain to both fixed price and</p> <p>11 cost plus contracts -- cost reimbursement</p> <p>12 contracts?</p> <p>13 MR. WINE: Objection, then, instead</p> <p>14 of asking him about all the exhibits, we should go</p> <p>15 exhibit through exhibit.</p> <p>16 A. The exhibits marked 109 through 123</p> <p>17 pertain to fixed price contracts.</p> <p>18 BY MR. BARR:</p> <p>19 Q. If you could take a closer look, do some</p> <p>20 of them pertain to cost reimbursement contracts as</p> <p>21 well?</p> <p>22 MR. WINE: Same objection, vague and</p> <p style="text-align: right;">Page 231</p>	<p>1 relative to inspection remain constant throughout</p> <p>2 the entire period.</p> <p>3 BY MR. BARR:</p> <p>4 Q. Now, we focused earlier on the World</p> <p>5 War II period. Let's focus on the post-war period.</p> <p>6 Did you determine in your review of</p> <p>7 documents and testimony in this case whether or not</p> <p>8 any DOD personnel supervised or directed Ryan or</p> <p>9 TRA personnel in the actual day-to-day</p> <p>10 manufacturing operations or processes at the plant?</p> <p>11 MR. WINE: Objection, compound,</p> <p>12 vague and ambiguous, calls for a legal conclusion,</p> <p>13 goes beyond the scope of the witness' expert</p> <p>14 report.</p> <p>15 A. Based upon the documents that I reviewed</p> <p>16 in preparation for this deposition, there's no</p> <p>17 such -- I saw no such evidence.</p> <p>18 BY MR. BARR:</p> <p>19 Q. And did you review documents in that</p> <p>20 regard in the preparation of your expert report?</p> <p>21 A. Yes, I did.</p> <p>22 Q. And did you determine in your review of</p> <p style="text-align: right;">Page 233</p>
<p>1 ambiguous.</p> <p>2 A. I misspoke. I didn't go deep enough</p> <p>3 into the documents, but, for example, Exhibit</p> <p>4 No. 111 on Bates number ending in 9521 does refer</p> <p>5 to clauses for cost reimbursable type contracts.</p> <p>6 MR. WINE: I object to counsel's</p> <p>7 preface regarding the period of time relevant.</p> <p>8 There are no regulations or ASPR provisions</p> <p>9 provided relating to cost based contracts until the</p> <p>10 mid-1950s.</p> <p>11 BY MR. BARR:</p> <p>12 Q. Now, based on your knowledge and</p> <p>13 experience as a government contracting officer,</p> <p>14 when the FARs came into being, did the FARs in the</p> <p>15 1980s and 1990s change the nature, purpose, or</p> <p>16 methods of government inspection that had been</p> <p>17 expressed in the ASPRs?</p> <p>18 MR. WINE: Objection, calls for a</p> <p>19 legal conclusion, assumes facts not in evidence,</p> <p>20 relevance.</p> <p>21 A. Based upon my experience and training</p> <p>22 and the documents I have reviewed, the provisions</p> <p style="text-align: right;">Page 232</p>	<p>1 documents and testimony in this case whether or not</p> <p>2 any DOD personnel in this post-war period</p> <p>3 supervised or directed Ryan or TRA employees or</p> <p>4 executives in the day-to-day usage of chemicals in</p> <p>5 manufacturing operations or processes?</p> <p>6 MR. WINE: Same objection.</p> <p>7 A. Based upon the volume of the documents</p> <p>8 that I reviewed, I no -- I saw no such evidence.</p> <p>9 BY MR. BARR:</p> <p>10 Q. Did you determine in your review of</p> <p>11 documents and testimony in this case whether or not</p> <p>12 any DOD personnel in the post-war period supervised</p> <p>13 or directed Ryan or TRA personnel concerning</p> <p>14 methods or facilities for the disposal of chemical</p> <p>15 waste generated during operations at the Harbor</p> <p>16 Drive plant?</p> <p>17 MR. WINE: Same objections.</p> <p>18 A. Based upon the volume of documents that</p> <p>19 I reviewed, I saw no such evidence.</p> <p>20 BY MR. BARR:</p> <p>21 Q. And did you determine in your review of</p> <p>22 documents and testimony in this case whether or not</p> <p style="text-align: right;">Page 234</p>

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<p>1 any DOD personnel in the post-war period supervised 2 or directed company personnel in the handling of 3 any PCB containing fluids that came out of any 4 plant machinery or equipment? 5 MR. WINE: Same objections. 6 A. Based upon the documents that I 7 reviewed, I saw no such evidence. 8 BY MR. BARR: 9 Q. Now, in your career experience as a 10 contracting officer and executive, did you ever 11 learn of a situation in which any DOD personnel 12 supervised or directed contractor employees or 13 executives concerning the actual day-to-day 14 manufacturing operations or processes at the 15 contractors' plants? 16 MR. WINE: Objection, vague and 17 ambiguous, calls for a legal conclusion, goes 18 beyond the scope -- irrelevant and goes beyond the 19 scope of the witness' expert report and, therefore, 20 is inadmissible. 21 A. In my 30-odd -- odd years of direct 22 experience in administration and/or award of</p> <p style="text-align: right;">Page 235</p>	<p>1 documentation relative to Hughes inspectors. 2 Q. Is it your recollection that there were 3 others? 4 MR. WINE: Objection, leading. 5 A. I do believe there were others, but I 6 can't recall specifically the names of those 7 contractors. 8 BY MR. BARR: 9 Q. In the course of your career as a 10 government contracting official, did you encounter 11 prime contractor resident inspectors at contractor 12 plants from time to time? 13 MR. WINE: Objection, relevance, 14 beyond the scope, lack of foundation. 15 A. Yes, I did. I specifically alluded to a 16 contractor in Long Island, New York, I had visited 17 that was a subcontractor to Pratt & Whitney, and I 18 also had contracts with the same company for 19 production of spare parts in support of the F100 20 engine. The contractor was producing parts as a 21 subcontractor to Pratt & Whitney for production of 22 new F100 engines, and I was procuring parts from</p> <p style="text-align: right;">Page 237</p>
<p>1 government contracts, I no -- I saw no evidence 2 that indicated that the government had in any way 3 supervised or directed contractors in how to handle 4 and/or dispose of hazardous chemicals. 5 BY MR. BARR: 6 Q. Now, did you become aware in the course 7 of your work in this case that there were 8 inspectors located at the Ryan and TRA facility 9 acting on behalf of other customers? 10 MR. WINE: During what period? 11 MR. BARR: The entire post-war 12 period. 13 MR. WINE: Objection, vague and 14 ambiguous, leading. 15 A. Yes, I did see evidence that there were 16 certain prime contractors who had subcontracts with 17 Ryan and/or TRA that had inspectors located at the 18 Ryan facility. 19 BY MR. BARR: 20 Q. Do you recall which prime contractors 21 had such representatives at the plant? 22 A. I specifically recall seeing</p> <p style="text-align: right;">Page 236</p>	<p>1 the same contractor as spare parts. And there were 2 Pratt & Whitney inspectors at that facility when I 3 visited the plant. 4 (Exhibit No. 124 marked) 5 MR. WINE: We're at 124? 6 MR. BARR: I believe that's right. 7 BY MR. BARR: 8 Q. Mr. Jordan, if you would take a moment 9 to read through that document, and after you have, 10 let us know if you recall reviewing this in 11 connection with your expert work in this case, and 12 then I'll have an additional question for you. 13 MR. WINE: Objection, lacks 14 foundation, assumes facts not in evidence, goes 15 beyond the scope of the witness' expert report for 16 which the witness is qualified to give expert 17 opinion testimony and is, therefore, inadmissible. 18 Also objection on the basis of relevance. 19 A. I have reviewed this letter. 20 BY MR. BARR: 21 Q. This appears to be a statement by the 22 secretary of the Air Force at that time.</p> <p style="text-align: right;">Page 238</p>

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<p>1 Is my understanding of that correct?</p> <p>2 MR. WINE: Objection, the document</p> <p>3 speaks for itself, mischaracterizes the document.</p> <p>4 A. That is my interpretation of this</p> <p>5 letter, yes, it is.</p> <p>6 BY MR. BARR:</p> <p>7 Q. Now, if -- let me direct your attention</p> <p>8 to, in particular, the last paragraph on the second</p> <p>9 page.</p> <p>10 A. Okay.</p> <p>11 Q. I believe the paragraph starts, "Other</p> <p>12 factors."</p> <p>13 A. That's correct.</p> <p>14 Q. Is this 1953 Air Force statement</p> <p>15 consistent with your understanding and experience</p> <p>16 from the 1960s through 1990s?</p> <p>17 MR. WINE: Objection, relevance,</p> <p>18 hearsay, beyond the scope of the witness' expert</p> <p>19 report and beyond the witness' area of expertise in</p> <p>20 that it predates his employment with the federal</p> <p>21 government.</p> <p>22 A. Yes, it is consistent with my training</p> <p style="text-align: right;">Page 239</p>	<p>1 beyond the scope of the witness' expert report.</p> <p>2 A. Yes, I did.</p> <p>3 BY MR. BARR:</p> <p>4 Q. And this was in the post-war period?</p> <p>5 A. Yes, it was.</p> <p>6 Q. Do you recall the nature of the</p> <p>7 documents which so indicated?</p> <p>8 A. They were documents identified as</p> <p>9 history of the San Diego Air Procurement District,</p> <p>10 which was an umbrella organization that had</p> <p>11 administrative responsibility for all of the</p> <p>12 companies in the San Diego area, including Ryan.</p> <p>13 Q. And we have marked as exhibits here</p> <p>14 today, and perhaps on Monday, a number of those</p> <p>15 reports?</p> <p>16 MR. WINE: Objection, vague and</p> <p>17 ambiguous.</p> <p>18 BY MR. BARR:</p> <p>19 Q. Do you recall that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. In the 1950s, do the reports -- these</p> <p>22 Air Force reports that you have reviewed, do they</p> <p style="text-align: right;">Page 241</p>
<p>1 and experience.</p> <p>2 MR. WINE: And insofar as the</p> <p>3 document is not referenced by the witness in his</p> <p>4 expert report, it goes beyond the scope of his</p> <p>5 report and is, therefore, inadmissible.</p> <p>6 MR. BARR: Off the record for a</p> <p>7 moment.</p> <p>8 THE VIDEOGRAPHER: Going off the</p> <p>9 record, 11:48.</p> <p>10 (Recess: 11:48 a.m. to 11:49 a.m.)</p> <p>11 THE VIDEOGRAPHER: Back on record,</p> <p>12 11:49.</p> <p>13 BY MR. BARR:</p> <p>14 Q. Mr. Jordan, let me switch gears slightly</p> <p>15 and focus on government inspectors in the context</p> <p>16 of the larger San Diego area, not just at the Ryan</p> <p>17 plant.</p> <p>18 Did you encounter evidence in this case,</p> <p>19 documents indicating that government inspectors</p> <p>20 were located at other defense contractor plants in</p> <p>21 the San Diego area?</p> <p>22 MR. WINE: Objection, relevance,</p> <p style="text-align: right;">Page 240</p>	<p>1 indicate how many Air Force inspectors generally</p> <p>2 were assigned to the Ryan plant?</p> <p>3 MR. WINE: Objection, the documents</p> <p>4 speak for themselves and the best evidence. The</p> <p>5 testimony that Counsel seeks to elicit from this</p> <p>6 witness should be used as the source of the</p> <p>7 information sought.</p> <p>8 A. Yes, they do.</p> <p>9 BY MR. BARR:</p> <p>10 Q. Do you have a recollection as to the</p> <p>11 range, in terms of the number of such inspectors --</p> <p>12 Air Force inspectors, assigned to the Ryan plant</p> <p>13 during the 1950s?</p> <p>14 MR. WINE: Same objection. Also</p> <p>15 calls for speculation. The documents, to the</p> <p>16 extent they speak to that, can speak directly to</p> <p>17 the number for a particular period of time as</p> <p>18 opposed to speculation of the witness' recollection</p> <p>19 of that document.</p> <p>20 BY MR. BARR:</p> <p>21 Q. Are you speculating, Mr. Jordan?</p> <p>22 A. I am not speculating. I recall</p> <p style="text-align: right;">Page 242</p>

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<p>1 precisely what the documents say. They said</p> <p>2 relative to the numbers, and it ranged between four</p> <p>3 and eight.</p> <p>4 MR. WINE: And the response assumes</p> <p>5 facts not in evidence to the extent we're not</p> <p>6 referring specifically to a document that resides</p> <p>7 in a stack of 124 exhibits over two days.</p> <p>8 BY MR. BARR:</p> <p>9 Q. Now, during your career, Mr. Jordan, did</p> <p>10 you become familiar with something known as</p> <p>11 "process inspection"?</p> <p>12 A. Yes, I did.</p> <p>13 Q. What is it? What is process inspection?</p> <p>14 A. Process inspection is the inspection</p> <p>15 primarily under the responsibility of the</p> <p>16 contractor inspectors to inspect material as it</p> <p>17 goes through the various stages or processes that</p> <p>18 lead up to the final inspection and acceptance of</p> <p>19 that product.</p> <p>20 Q. And why is process inspection done?</p> <p>21 A. It is very frequently, based upon my</p> <p>22 experience and training, virtually impossible to</p> <p style="text-align: right;">Page 243</p>	<p>1 vendors to General Electric who made the billit, if</p> <p>2 you will, and that is the material from which the</p> <p>3 forging was made for the disk -- and the disk is</p> <p>4 the machine -- the component of a jet engine --</p> <p>5 Q. Is that billit, b-i-l-l-i-t?</p> <p>6 A. Yes, it is a foundry product that is</p> <p>7 then subject to forging and machining.</p> <p>8 But, anyway, the company that had</p> <p>9 produced that billit had produced, previously,</p> <p>10 another alloy, and they had failed to properly</p> <p>11 clean the crucible in which the various components</p> <p>12 of that billit were melted. And there were foreign</p> <p>13 substances introduced into the billit that</p> <p>14 subsequently ended up in the disk, and those</p> <p>15 foreign substances introduced a weak spot, if you</p> <p>16 will, in that disk, and that subsequently resulted</p> <p>17 in a failure of the disk and a catastrophic</p> <p>18 explosion of the engine.</p> <p>19 Q. Now, in terms of processing, is heat</p> <p>20 treating an example of processing?</p> <p>21 A. Heat treating is one of the many</p> <p>22 processes that some components are subjected to.</p> <p style="text-align: right;">Page 245</p>
<p>1 determine certain characteristics of the finished</p> <p>2 product unless you pay very close attention to the</p> <p>3 processes of the components as you go through the</p> <p>4 manufacturing process.</p> <p>5 Q. Can you give an example of what kind of</p> <p>6 process that would be?</p> <p>7 A. I can give you an example based upon my</p> <p>8 experience, and I think that I alluded to it either</p> <p>9 in my earlier deposition or my expert report -- I</p> <p>10 don't remember which -- but we had a contract with</p> <p>11 General Electric for the J85 engine component. And</p> <p>12 the J85 was the engine -- jet engine that was used</p> <p>13 on the T38 trainer based primarily at Randolph Air</p> <p>14 Force Base here in San Antonio.</p> <p>15 I don't remember the exact date, but</p> <p>16 sometime during the '80s, there was a catastrophic</p> <p>17 failure of an engine on a T38. I seem to recall</p> <p>18 that we lost the -- both the pilot and the</p> <p>19 trainer -- trainee in that catastrophic engine</p> <p>20 failure because the engine virtually exploded.</p> <p>21 The accident investigation determined</p> <p>22 that during the manufacturing process, one of the</p> <p style="text-align: right;">Page 244</p>	<p>1 For example, an electronic component would not be</p> <p>2 subject to heat treating, but many of the metal --</p> <p>3 metal components would be subject to heat treating.</p> <p>4 Q. Now, why is metal heat treated?</p> <p>5 MR. WINE: Objection.</p> <p>6 A. Based upon my experience and training,</p> <p>7 metal is heat treated to -- both to release</p> <p>8 stresses and to make it harder and more suitable</p> <p>9 for use in the end product.</p> <p>10 MR. WINE: Object to the response to</p> <p>11 the extent the witness is not qualified to offer an</p> <p>12 opinion on the purpose of heat treating either by</p> <p>13 training, qualification, or by experience.</p> <p>14 BY MR. BARR:</p> <p>15 Q. During the course of your career,</p> <p>16 Mr. Jordan, did you become aware that heat treating</p> <p>17 was a process to which metals were subjected?</p> <p>18 MR. WINE: Objection. Awareness</p> <p>19 isn't a basis for an expert opinion.</p> <p>20 A. Yes, I did, both at engine</p> <p>21 manufacturers, such as General Electric, and</p> <p>22 aircraft manufacturers, such as General Dynamics,</p> <p style="text-align: right;">Page 246</p>

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<p>1 and McDonnell Douglas.</p> <p>2 BY MR. BARR:</p> <p>3 Q. And did this awareness come as a result</p> <p>4 of direct experience with these manufacturers?</p> <p>5 MR. WINE: The line of questioning</p> <p>6 goes beyond the -- the attempted qualification of</p> <p>7 the witness' expertise in government contracting.</p> <p>8 A. Based upon my personal observation</p> <p>9 during visits to those contractors' facilities.</p> <p>10 BY MR. BARR:</p> <p>11 Q. And in terms of how government</p> <p>12 inspection personnel fit into process inspection,</p> <p>13 how do they go about doing their work?</p> <p>14 MR. WINE: Objection, beyond the</p> <p>15 scope, vague, ambiguous, leading.</p> <p>16 A. It is primarily based upon a review of</p> <p>17 the contractor documentation of the contractor's</p> <p>18 inspection during the various processes that the</p> <p>19 parts are subjected to, and then the ability of the</p> <p>20 government inspectors to conduct periodic or</p> <p>21 statistical sampling of inspections of those</p> <p>22 products as they go through the processes.</p> <p style="text-align: right;">Page 247</p>	<p>1 relating to process inspection are the contents of</p> <p>2 the documents with respect to process inspection --</p> <p>3 are those consistent with your experience and</p> <p>4 training during the course of your career?</p> <p>5 MR. WINE: Objection, assumes facts</p> <p>6 not in evidence, the documents speak for themselves</p> <p>7 and provide the best source of evidence in this</p> <p>8 matter.</p> <p>9 A. Yes, they are.</p> <p>10 BY MR. BARR:</p> <p>11 Q. And do you recall that some of the</p> <p>12 documents that we've marked as exhibits here today</p> <p>13 have discussions relating to process inspection?</p> <p>14 MR. WINE: Objection, vague and</p> <p>15 ambiguous to the extent that Counsel is referring</p> <p>16 to a universe of now 124 exhibits.</p> <p>17 A. Yes, they do.</p> <p>18 BY MR. BARR:</p> <p>19 Q. Did you -- do you recall encountering a</p> <p>20 document in the course of your expert work in this</p> <p>21 case relating to Ryan's understanding of process</p> <p>22 specifications?</p> <p style="text-align: right;">Page 249</p>
<p>1 BY MR. BARR:</p> <p>2 Q. Now, is -- based on your experience and</p> <p>3 training, did process inspection include inspection</p> <p>4 of contractor disposal of chemicals when they were</p> <p>5 waste and could no longer be used in the processes?</p> <p>6 MR. WINE: Objection.</p> <p>7 A. I would not consider the disposal to be</p> <p>8 a process, but none of the documents that I</p> <p>9 reviewed, nor in my experience did I ever observe</p> <p>10 or read about the government involvement in the</p> <p>11 disposal of hazardous materials once they were</p> <p>12 considered to be, quote/unquote, spent.</p> <p>13 BY MR. BARR:</p> <p>14 Q. And is your understanding of process</p> <p>15 inspection -- aside from your experience and</p> <p>16 training during your career, is it based on</p> <p>17 documents that you have reviewed in the course of</p> <p>18 your work as an expert in this case?</p> <p>19 MR. WINE: Objection.</p> <p>20 A. Yes, it is.</p> <p>21 BY MR. BARR:</p> <p>22 Q. The documents that you've reviewed</p> <p style="text-align: right;">Page 248</p>	<p>1 MR. WINE: Objection. Calls --</p> <p>2 object to the form of the question.</p> <p>3 A. Yes, I do.</p> <p>4 (Exhibit No. 125 marked)</p> <p>5 BY MR. BARR:</p> <p>6 Q. Mr. Jordan, do you recall having</p> <p>7 reviewed this document before in connection with</p> <p>8 your expert work in this case?</p> <p>9 A. Yes, I do.</p> <p>10 Q. Let me direct your attention to page --</p> <p>11 with the Bates number 482.</p> <p>12 MR. WINE: Object for the record;</p> <p>13 the document lacks a foundation and contains</p> <p>14 hearsay that is not admissible via this witness.</p> <p>15 A. Okay.</p> <p>16 BY MR. BARR:</p> <p>17 Q. Is this discussion, in what we've marked</p> <p>18 as Exhibit 125, consistent, in your opinion, with</p> <p>19 your experience and the government documents that</p> <p>20 you've reviewed in this case?</p> <p>21 MR. WINE: Objection, calls for</p> <p>22 speculation. The document speaks for itself.</p> <p style="text-align: right;">Page 250</p>

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<p>1 A. Yes, it is.</p> <p>2 MR. WINE: I also object to the</p> <p>3 extent Counsel has been inquiring with the witness</p> <p>4 about process inspection and the reference document</p> <p>5 in which the pages refer to process specifications.</p> <p>6 BY MR. BARR:</p> <p>7 Q. Mr. Jordan, do you believe that there's</p> <p>8 a difference in terms of the context as far as</p> <p>9 process specifications and the responsibilities</p> <p>10 that are outlined in this document?</p> <p>11 MR. WINE: Objection, calls for</p> <p>12 speculation, the document speaks for itself. Also</p> <p>13 calls for hearsay testimony, assumes facts not in</p> <p>14 evidence.</p> <p>15 A. They are consistent in my opinion.</p> <p>16 BY MR. BARR:</p> <p>17 Q. Are you familiar with the term</p> <p>18 "manufacturing process data document"?</p> <p>19 A. Yes, I am.</p> <p>20 Q. Based on your experience and training,</p> <p>21 is there a relationship -- or has there been a</p> <p>22 relationship between military specifications and a</p> <p style="text-align: right;">Page 251</p>	<p>1 assumes facts not in evidence insofar as it seeks</p> <p>2 to characterize the purpose at Ryan for certain</p> <p>3 documentation that the witness is testifying about.</p> <p>4 BY MR. BARR:</p> <p>5 Q. Mr. Jordan, have you reviewed a number</p> <p>6 of Ryan and/or TRA manufacturing process data</p> <p>7 documents?</p> <p>8 A. Yes, I have.</p> <p>9 Q. And is it your understanding, based on</p> <p>10 your knowledge and experience that the essential</p> <p>11 contents of those documents were the same or</p> <p>12 similar to the process documentation that you</p> <p>13 encountered at other contractors?</p> <p>14 MR. WINE: Objection, assumes facts</p> <p>15 not in evidence, mischaracterizes the content of</p> <p>16 documents, calls for a legal analysis.</p> <p>17 A. Yes, they were.</p> <p>18 BY MR. BARR:</p> <p>19 Q. Now, in terms of the MPDs, did these MPD</p> <p>20 documents go through a review and approval process</p> <p>21 at the -- between Ryan and government inspectors?</p> <p>22 MR. WINE: Objection, calls for</p> <p style="text-align: right;">Page 253</p>
<p>1 contractor's MPDs?</p> <p>2 MR. WINE: Objection, calls for a</p> <p>3 legal conclusion, assumes facts not in evidence.</p> <p>4 A. Yes, there is.</p> <p>5 BY MR. BARR:</p> <p>6 Q. Are you aware of contractors other than</p> <p>7 Ryan and/or TRA who used documents such as -- used</p> <p>8 manufacturing process data documents?</p> <p>9 MR. WINE: Objection, vague and</p> <p>10 ambiguous.</p> <p>11 A. Based upon my experience and personal</p> <p>12 observation, I have seen contractors use similar</p> <p>13 type documents. They may not have been called</p> <p>14 MPDs, manufacturing process data documents, but</p> <p>15 they had the same purpose and intent as the MPDs</p> <p>16 that were prepared by Ryan.</p> <p>17 MR. WINE: Objection.</p> <p>18 BY MR. BARR:</p> <p>19 Q. The documents that --</p> <p>20 MR. WINE: Wait. Hold on.</p> <p>21 MR. BARR: Sorry.</p> <p>22 MR. WINE: Objection. The response</p> <p style="text-align: right;">Page 252</p>	<p>1 speculation, calls -- assumes facts not in</p> <p>2 evidence, goes beyond the scope of the witness'</p> <p>3 expert report and his area of expertise, call --</p> <p>4 assumes facts not in evidence.</p> <p>5 A. Based upon the MPDs that I reviewed,</p> <p>6 there is no evidence on the face of those documents</p> <p>7 that they had been reviewed and approved by</p> <p>8 government personnel. However, deposition</p> <p>9 testimony by Mr. Iannucci indicated that they were</p> <p>10 subject to review by the government inspectors,</p> <p>11 and, if you will, they were frequently or sometimes</p> <p>12 returned to Ryan for changes, and so they</p> <p>13 subsequently, then, became a mutually agreed to</p> <p>14 document for various processes.</p> <p>15 MR. WINE: Objection to the</p> <p>16 characterization of the documents that speak for</p> <p>17 themselves or to the characterization of</p> <p>18 Mr. Iannucci's testimony.</p> <p>19 BY MR. BARR:</p> <p>20 Q. Now, with respect to the MPDs that you</p> <p>21 reviewed that were issued by TRA -- and by the way,</p> <p>22 let me -- let me step back. Who was the</p> <p style="text-align: right;">Page 254</p>

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<p>1 originator -- who had responsibility, as you</p> <p>2 understood it, for the initial draft and</p> <p>3 origination of the MPDs?</p> <p>4 MR. WINE: Objection, assumes facts</p> <p>5 not in evidence, beyond the scope of the witness'</p> <p>6 knowledge and expertise, beyond the scope of the</p> <p>7 witness' expert report.</p> <p>8 A. Based upon my review of the documents,</p> <p>9 the responsibility for preparation of the MPDs was</p> <p>10 that of the contractor to take the specifications</p> <p>11 that were incorporated into the contract and then,</p> <p>12 if you will, translate them into a form that was</p> <p>13 usable for various manufacturing processes at the</p> <p>14 contractor's facility.</p> <p>15 BY MR. BARR:</p> <p>16 Q. And in any of the TRA MPD documents that</p> <p>17 you reviewed, did any of them speak about chemical</p> <p>18 waste disposal methods or practices?</p> <p>19 MR. WINE: Objection, assumes facts</p> <p>20 not in evidence, the documents speak for</p> <p>21 themselves.</p> <p>22 A. I saw no evidence whatsoever in any of</p> <p style="text-align: right;">Page 255</p>	<p>1 witness. To the extent that there are exhibits</p> <p>2 between Exhibits 126 and 141 that are not</p> <p>3 referenced in the witness' expert report, they are</p> <p>4 beyond the scope of his report and, therefore,</p> <p>5 inadmissible.</p> <p>6 A. I have reviewed these documents.</p> <p>7 BY MR. BARR:</p> <p>8 Q. And are these, in your view,</p> <p>9 representative of the MPDs that are available to</p> <p>10 the parties in the record?</p> <p>11 MR. WINE: Objection to the extent</p> <p>12 Counsel has used the term "representative," the</p> <p>13 documents speak for themselves. To the extent</p> <p>14 there are further documents, those documents speak</p> <p>15 for themselves as well.</p> <p>16 A. Yes, they are.</p> <p>17 BY MR. BARR:</p> <p>18 Q. Now, you mentioned a moment ago -- are</p> <p>19 these the -- are these MPDs -- are these some of</p> <p>20 the documents which serve as the basis for your</p> <p>21 opinions concerning the disposal of chemical</p> <p>22 waste dispose -- the disposal of chemical waste?</p> <p style="text-align: right;">Page 257</p>
<p>1 the documents that spoke to disposal and/or</p> <p>2 handling of chemical waste.</p> <p>3 MR. BARR: Let's go off the record,</p> <p>4 and while we're off the record, before you do that,</p> <p>5 I'll have another group of exhibits marked.</p> <p>6 THE VIDEOGRAPHER: Going off the</p> <p>7 record, 12:11.</p> <p>8 (Recess: 12:11 p.m. to 12:14 p.m.)</p> <p>9 THE VIDEOGRAPHER: Back on record,</p> <p>10 12:14.</p> <p>11 (Exhibit Nos. 126 through 141</p> <p>12 marked)</p> <p>13 BY MR. BARR:</p> <p>14 Q. Mr. Jordan, if you would, please take a</p> <p>15 moment to scan through these documents. I'll have</p> <p>16 a -- just my initial question will be if you recall</p> <p>17 reviewing these documents in the course of your</p> <p>18 expert work in this case.</p> <p>19 MR. WINE: For the record, while the</p> <p>20 witness is reviewing the documents, TDY objects</p> <p>21 with respect to foundation, with respect to</p> <p>22 completeness of the compilation provided to the</p> <p style="text-align: right;">Page 256</p>	<p>1 MR. WINE: Objection, assumes facts</p> <p>2 not in evidence.</p> <p>3 A. They are among the -- the group of</p> <p>4 documents upon which I based my opinion, yes.</p> <p>5 BY MR. BARR:</p> <p>6 Q. Now, you mentioned a moment ago that you</p> <p>7 had encountered other defense contractors which</p> <p>8 used similar documents, even if they didn't</p> <p>9 describe them as MPDs. Correct?</p> <p>10 A. That's correct.</p> <p>11 MR. BARR: I'm going to have marked</p> <p>12 four additional exhibits.</p> <p>13 (Exhibit Nos. 142 through 145</p> <p>14 marked)</p> <p>15 MR. BARR: Now, while you're doing</p> <p>16 that, I'll just mention for the record that three</p> <p>17 of these are Hughes Corporation -- or Hughes Tool</p> <p>18 Company specifications, and one is a Northrop</p> <p>19 Corporation process specification.</p> <p>20 MR. WINE: For the record, plaintiff</p> <p>21 objects to the documents on the basis of relevance,</p> <p>22 foundation, and that the documents speak for</p> <p style="text-align: right;">Page 258</p>

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<p>1 themselves.</p> <p>2 A. I have reviewed these documents.</p> <p>3 BY MR. BARR:</p> <p>4 Q. And have you reviewed these documents in</p> <p>5 the course of your expert work in this case?</p> <p>6 A. Yes, I have.</p> <p>7 Q. Based on your experience and training</p> <p>8 over the course of your career, are these documents</p> <p>9 examples of, in effect, MPDs written by other</p> <p>10 aerospace manufacturers?</p> <p>11 MR. WINE: Objection. The question</p> <p>12 calls for a -- for testimony that goes beyond the</p> <p>13 witness' area of expertise and beyond the area</p> <p>14 which he is sought to be qualified as an expert.</p> <p>15 A. Based upon my experience and education,</p> <p>16 yes, they are.</p> <p>17 BY MR. BARR:</p> <p>18 Q. And are these documents that we've</p> <p>19 marked -- I'm sorry. What was the exhibit numbers</p> <p>20 on this?</p> <p>21 A. 142 through 145.</p> <p>22 Q. Were Exhibits -- are Exhibits 142</p> <p style="text-align: right;">Page 259</p>	<p>1 BY MR. BARR:</p> <p>2 Q. Mr. Jordan, is your testimony on this</p> <p>3 subject, is that based on your recollection?</p> <p>4 A. Yes, it is.</p> <p>5 MR. WINE: Same objections.</p> <p>6 BY MR. BARR:</p> <p>7 Q. All right. Let's talk about property</p> <p>8 administrators, and then I think we'll be in a</p> <p>9 position to break for lunch.</p> <p>10 And I believe you testified in</p> <p>11 general terms as to the duties and responsibilities</p> <p>12 of property administrators for the government</p> <p>13 earlier. In what kinds of documents did you find</p> <p>14 information as to the duties and responsibilities</p> <p>15 of property administrators at Ryan?</p> <p>16 MR. WINE: Objection, foundation,</p> <p>17 the documents speak for themselves, vague and</p> <p>18 ambiguous.</p> <p>19 A. The property administrators specifically</p> <p>20 use ASPR Appendix B on government property, and</p> <p>21 then I also, in my expert report, alluded to the</p> <p>22 job description for the series identified as</p> <p style="text-align: right;">Page 261</p>
<p>1 through 145 similar to the kinds of process</p> <p>2 specifications or MPD-like documents that you</p> <p>3 encountered during the course of your career?</p> <p>4 MR. WINE: Objection, relevance,</p> <p>5 calls for speculation, beyond the scope of the</p> <p>6 witness' area of expertise.</p> <p>7 A. Yes, they are.</p> <p>8 BY MR. BARR:</p> <p>9 Q. Are you speculating, Mr. Jordan?</p> <p>10 A. No, I am no not.</p> <p>11 MR. WINE: Also, to the extent that</p> <p>12 the documents are not referenced in or relied upon</p> <p>13 in the witness' expert report, they go beyond the</p> <p>14 scope of that report and are, therefore,</p> <p>15 inadmissible.</p> <p>16 Also, vague and ambiguous in the use</p> <p>17 of the term "similarity" as to whether or not the</p> <p>18 documentation is similar or whether the processes</p> <p>19 described therein are similar. If the latter, the</p> <p>20 witness is not qualified to opine. If the former,</p> <p>21 then the documents speak for themselves.</p> <p>22</p> <p style="text-align: right;">Page 260</p>	<p>1 government Property Administrators and The Duties</p> <p>2 and Responsibilities of Property Administrators</p> <p>3 that Work for the government and -- those two basic</p> <p>4 documents, and then the other ASPR references to</p> <p>5 government property form my opinion.</p> <p>6 BY MR. BARR:</p> <p>7 Q. Were your opinions or testimony also</p> <p>8 based, to some extent, on reports by the Air Force</p> <p>9 during, let's say, the 1950s?</p> <p>10 A. There was --</p> <p>11 MR. WINE: Objection, leading.</p> <p>12 A. There was a reference in the history of</p> <p>13 the San Diego Air Procurement District to the</p> <p>14 property administrators.</p> <p>15 BY MR. BARR:</p> <p>16 Q. Now, you mentioned ASPR Appendix B. Let</p> <p>17 me mark as the next three exhibits three examples</p> <p>18 of what I believe are Appendix B.</p> <p>19 (Exhibit Nos. 146 through 148</p> <p>20 marked)</p> <p>21 BY MR. BARR:</p> <p>22 Q. All right, Mr. Jordan. I'm going to</p> <p style="text-align: right;">Page 262</p>

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<p>1 hand you these three exhibits, 146 through 148, 2 and, if you would, take a moment to just determine 3 what they are.</p> <p>4 MR. WINE: While the witness is 5 reviewing the documents, TDY asserts the same 6 objections to Exhibits 146 through 148 that's 7 asserted to other excerpts and incomplete 8 compilations of ASPRs previously sought to be 9 introduced by the United States in this matter -- 10 or in this deposition.</p> <p>11 The documents speak for themselves 12 and are the best source of information to the 13 extent the United States is seeking to elicit the 14 role and responsibility of property administrators.</p> <p>15 Also, the three documents are for 16 varied periods of time. So to the extent that 17 Counsel seeks to elicit testimony regarding certain 18 periods of time not provided herein, there is 19 incomplete information. There is -- the question 20 assumes facts not in evidence.</p> <p>21 A. I have reviewed these documents. 22</p> <p style="text-align: right;">Page 263</p>	<p>1 BY MR. BARR: 2 Q. Mr. Jordan, let's -- let's continue. 3 One housekeeping matter -- one thing I did not 4 include in the record, we had talked about advance 5 agreements, and we had talked about an advance 6 agreement between TRA and the Department of 7 Defense. Do you recall that? 8 A. Yes. 9 MR. BARR: We'll mark as the next 10 exhibit in order a three-page document. 11 (Exhibit No. 149 marked) 12 BY MR. BARR: 13 Q. Mr. Jordan, is this the settlement and 14 advance agreement that you had in mind? 15 A. Yes, it is. 16 Q. And now getting back to the subject of 17 property administrators, which we were talking 18 about before we broke for lunch. In essence, based 19 on your experience, how did the property 20 administrator go about discharging his 21 responsibilities at a contractor's location? 22 MR. WINE: Objection, calls for</p> <p style="text-align: right;">Page 265</p>
<p>1 BY MR. BARR: 2 Q. Are these the Appendix B's manuals that 3 you referred to a moment ago? 4 A. Yes, they are. 5 Q. Do these, in fact, have descriptions of 6 the duties and responsibilities of property 7 administrators? 8 A. Yes, they do. 9 Q. Are these descriptions consistent with 10 your understanding of the duties of -- and 11 responsibilities of property administrators that 12 you developed during your career as a government 13 contracting officer? 14 A. Yes, they are. 15 MR. BARR: All right. Let's break 16 for lunch. 17 THE VIDEOGRAPHER: Going off the 18 record at 12:28. 19 (Recess: 12:28 p.m. to 1:21 p.m.) 20 THE VIDEOGRAPHER: Going back on 21 record at 1:21. 22</p> <p style="text-align: right;">Page 264</p>	<p>1 speculation. 2 A. The Appendix B specifically states that 3 the official contract record will be those 4 maintained by the contractor in discharge of his 5 duties and responsibilities. He primarily reviewed 6 those contractor prepared records of property that 7 had been provided to the contractor of government 8 furnished property. 9 BY MR. BARR: 10 Q. Is there any requirement in either 11 appendix -- any of the Appendix B documents or in 12 any other government document of which you're aware 13 for the property administrator to inspect items of 14 government machinery and equipment or repair them? 15 MR. WINE: Objection, the documents 16 speak for themselves, calls for a legal conclusion, 17 goes to the ultimate issue. 18 A. The documents that I have reviewed do 19 not indicate that the contractor did, in fact, 20 inspect government furnished equipment. They had 21 the right to inspect it, but I found no documents 22 on the record that they had, in fact, conducted</p> <p style="text-align: right;">Page 266</p>

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<p>1 those kinds of inspections.</p> <p>2 BY MR. BARR:</p> <p>3 Q. Now, in your last answer you said the</p> <p>4 documents that you had reviewed did not indicate</p> <p>5 that the contractor had inspected government</p> <p>6 furnished equipment.</p> <p>7 A. Okay. I misspoke. That the government</p> <p>8 inspectors had --</p> <p>9 Q. The property administrators?</p> <p>10 A. Property administrator.</p> <p>11 Q. Now, we've mentioned in -- this morning</p> <p>12 your awareness of prime contractor resident</p> <p>13 inspectors at various contractors. Do you recall</p> <p>14 that?</p> <p>15 MR. WINE: Objection, relevance.</p> <p>16 A. Yes, I recall.</p> <p>17 BY MR. BARR:</p> <p>18 Q. And do you recall our discussion -- your</p> <p>19 testimony relating to prime contractor resident</p> <p>20 inspectors at Ryan and TRA?</p> <p>21 MR. WINE: Same objection.</p> <p>22 A. Yes, I do.</p> <p style="text-align: right;">Page 267</p>	<p>1 referenced in or reflected in the expert's report,</p> <p>2 it exceeds the scope of that report and are,</p> <p>3 therefore, inadmissible.</p> <p>4 A. I do recall reviewing these documents.</p> <p>5 BY MR. BARR:</p> <p>6 Q. Let me direct your attention to what</p> <p>7 we've marked as Exhibit 150. That's the October</p> <p>8 1957 edition of the Ryan Management information</p> <p>9 bulletin.</p> <p>10 A. Okay.</p> <p>11 Q. Do you see the references in that</p> <p>12 document to Boeing personnel?</p> <p>13 A. Yes.</p> <p>14 MR. WINE: Objection, the document</p> <p>15 speaks for itself. Same objections as before.</p> <p>16 BY MR. BARR:</p> <p>17 Q. Does that refresh your memory as to</p> <p>18 other sub -- other prime contractors who had</p> <p>19 representatives resident at the Ryan plant?</p> <p>20 MR. WINE: Objection,</p> <p>21 mischaracterizes prior testimony.</p> <p>22 A. Yes, it does.</p> <p style="text-align: right;">Page 269</p>
<p>1 MR. BARR: We'll mark three</p> <p>2 exhibits. I'll correct myself. It's four.</p> <p>3 (Exhibit Nos. 150 through 153</p> <p>4 marked)</p> <p>5 BY MR. BARR:</p> <p>6 Q. Now, Mr. Jordan, with respect to 153, I</p> <p>7 put a red tape flag. And as you review those</p> <p>8 documents, when you get to that one, I direct your</p> <p>9 attention to the page that has a Bates number 523.</p> <p>10 A. Okay.</p> <p>11 MR. WINE: For the record, while the</p> <p>12 witness is reviewing the documents, we object on</p> <p>13 the basis of foundation, assumes facts not in</p> <p>14 evidence, and that the documents speak for</p> <p>15 themselves.</p> <p>16 Also, to the extent that the</p> <p>17 documents constitute hearsay, this witness can't --</p> <p>18 cannot be used to offer that evidence that is</p> <p>19 otherwise inadmissible.</p> <p>20 Also, just for complete --</p> <p>21 completeness of the record, to the extent the</p> <p>22 documents constituting Exhibits 150 to 153 are not</p> <p style="text-align: right;">Page 268</p>	<p>1 BY MR. BARR:</p> <p>2 Q. And these documents that we've marked as</p> <p>3 150 through 153, are these documents that form some</p> <p>4 of the bases for your opinions as to prime</p> <p>5 contractors' representatives at Ryan and TRA?</p> <p>6 MR. WINE: Objection to the extent</p> <p>7 it exceeds the opinions expressed in the report.</p> <p>8 A. Yes, they do.</p> <p>9 BY MR. BARR:</p> <p>10 Q. Okay. Let's turn to military contract</p> <p>11 vest -- titled, "Vesting Provisions."</p> <p>12 Are you familiar with TDY's argument in</p> <p>13 this case that the chemicals that Ryan and TRA used</p> <p>14 in their processes and the chemical waste that they</p> <p>15 generated became government property when the</p> <p>16 government made progress payments to Ryan and TRA?</p> <p>17 MR. WINE: Objection to the extent</p> <p>18 it mischaracterizes the legal position of TDY.</p> <p>19 A. I am familiar with that argument, yes.</p> <p>20 BY MR. BARR:</p> <p>21 Q. Now, progress payments are made in what</p> <p>22 type of contracts?</p> <p style="text-align: right;">Page 270</p>

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<p>1 A. Progress payments are made on fixed</p> <p>2 price contracts because there is no provision for</p> <p>3 progress payments under cost contracts because</p> <p>4 cost -- under a cost type contract, the contractor</p> <p>5 receives payments as he incurs those costs in</p> <p>6 support of a specific contract.</p> <p>7 Q. Now, are you aware of any evidence in</p> <p>8 this matter that Ryan or TRA ever maintained</p> <p>9 separate chemical processing tanks or degreasing</p> <p>10 equipment for different customers?</p> <p>11 MR. WINE: Objection, assumes facts</p> <p>12 not in evidence, leading.</p> <p>13 A. I saw no such evidence that they</p> <p>14 maintained separate tanks.</p> <p>15 MR. WINE: It also exceeds the scope</p> <p>16 of the witness' expert report and as such is</p> <p>17 inadmissible. It also exceeds the witness' area of</p> <p>18 expertise.</p> <p>19 BY MR. BARR:</p> <p>20 Q. Other than United States government</p> <p>21 customers, what other kinds of customers did Ryan</p> <p>22 and TRA work for during the history of the Harbor</p> <p style="text-align: right;">Page 271</p>	<p>1 conclusion that goes to the ultimate issue and</p> <p>2 exceeds the scope of the witness' expert report.</p> <p>3 A. Based upon the documents that I reviewed</p> <p>4 in my observation of multiple contractors, it's my</p> <p>5 opinion, based upon those contractors whom I</p> <p>6 personally visited, that it would be impractical</p> <p>7 for them to maintain separate processing tanks and,</p> <p>8 therefore, segregate the chemicals between those</p> <p>9 used in support of a commercial contractor, a</p> <p>10 foreign government, and/or the United States</p> <p>11 government.</p> <p>12 MR. WINE: Object and move to strike</p> <p>13 the response as based on speculation.</p> <p>14 MR. BARR: Well, I'll oppose that.</p> <p>15 BY MR. BARR:</p> <p>16 Q. If there are no separate chemical</p> <p>17 processing tanks or degreasing equipment, would</p> <p>18 there be any way to separate or segregate chemicals</p> <p>19 or chemical waste as between different contracts?</p> <p>20 MR. WINE: Objection, assumes facts</p> <p>21 not in evidence --</p> <p>22 A. Based upon --</p> <p style="text-align: right;">Page 273</p>
<p>1 Drive plant?</p> <p>2 MR. WINE: From inception to</p> <p>3 closure?</p> <p>4 MR. BARR: Correct.</p> <p>5 MR. WINE: Objection --</p> <p>6 A. Based --</p> <p>7 MR. WINE: -- broad and ambiguous.</p> <p>8 A. Based upon the documentation that I</p> <p>9 reviewed, they supported certain subcontracts for</p> <p>10 military type hardware from other prime</p> <p>11 contractors. They had commercial contracts, and</p> <p>12 then they provided products to certain foreign</p> <p>13 governments.</p> <p>14 BY MR. BARR:</p> <p>15 Q. Now, what is the significance, in your</p> <p>16 opinion based on your experience and knowledge, of</p> <p>17 the fact that -- or the fact that you have found no</p> <p>18 evidence that Ryan or TRA maintained separate</p> <p>19 chemical processing tanks or degreasing equipment</p> <p>20 for different kinds of customers?</p> <p>21 MR. WINE: Objection, leading,</p> <p>22 assumes facts not in evidence, calls for a legal</p> <p style="text-align: right;">Page 272</p>	<p>1 MR. WINE: -- calls for a</p> <p>2 hypothetical.</p> <p>3 A. Based upon those contractor facilities</p> <p>4 that I have personally visited and observed, there</p> <p>5 would be no such way to segregate those materials.</p> <p>6 MR. WINE: Same objection to the</p> <p>7 prior response as being based on speculation.</p> <p>8 BY MR. BARR:</p> <p>9 Q. Now, let's start with the available</p> <p>10 World War II contracts with respect to title</p> <p>11 vesting provisions. I believe you previously</p> <p>12 testified regarding the types of contracts, as to</p> <p>13 whether they were fixed price or cost type</p> <p>14 contracts.</p> <p>15 A. Yes.</p> <p>16 Q. Do you recall that testimony?</p> <p>17 MR. WINE: Objection,</p> <p>18 mischaracterizes prior testimony.</p> <p>19 BY MR. BARR:</p> <p>20 Q. Now, to the extent that these contracts</p> <p>21 called for payments before the finished product was</p> <p>22 delivered, did they contain requirements, to your</p> <p style="text-align: right;">Page 274</p>

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<p>1 recollection, regarding documentation to support 2 such request for payments by Ryan? 3 MR. WINE: Objection, the document 4 speaks for itself. 5 A. Yes, they did. 6 BY MR. BARR: 7 Q. Now, to the best of your knowledge, are 8 any such supporting documents for Ryan requests for 9 such payments during World War II available? 10 MR. WINE: Objection. 11 A. Not that I have seen in my review of the 12 documents pertaining to this -- this issue. 13 BY MR. BARR: 14 Q. Now, without such supporting documents, 15 can we tell whether the government got title to or 16 a lien on any chemicals or chemical wastes that 17 were generated at the Ryan plant -- 18 MR. WINE: Objection. 19 BY MR. BARR: 20 Q. -- during the war? 21 MR. WINE: Objection, calls for a 22 legal conclusion, goes to the ultimate issue, calls</p> <p style="text-align: right;">Page 275</p>	<p>1 word "materials" in this context? 2 MR. WINE: Objection, assumes facts 3 not in evidence, mischaracterizes documents, vague 4 and ambiguous. 5 A. Yes, they did. 6 BY MR. BARR: 7 Q. Did any of the contracts which used that 8 word, "materials," define that word? 9 MR. WINE: Same objection; assumes 10 facts not in evidence and mischaracterizes 11 documents that haven't been identified by Counsel 12 for this line of questioning. 13 A. Based upon my recollection, they were 14 basically defined as those things that had value 15 and those materials that were entered into and made 16 a part of the product being produced by the 17 government. 18 MR. WINE: Object to the response as 19 nonresponsive and mischaracterizes documents. 20 BY MR. BARR: 21 Q. Now, you understand, Mr. Jordan, that 22 the documents I'm referring to are the World War II</p> <p style="text-align: right;">Page 277</p>
<p>1 for speculation. 2 A. There is no way that I know of that they 3 could assume title absent that kind of 4 documentation. 5 BY MR. BARR: 6 Q. Well, the question was a little bit 7 different. So let me refocus it. 8 Without the supporting documentation, 9 can we make a determination whether the government 10 got title to or a lien on any of those materials? 11 MR. WINE: Same objections as 12 before. 13 A. Such a determination would be impossible 14 based upon my judgment. 15 MR. WINE: Based on what? 16 THE WITNESS: My judgment. 17 MR. WINE: Thank you. 18 BY MR. BARR: 19 Q. And is that based on your experience and 20 training? 21 A. Yes, it is. 22 Q. Now, did some of the contracts use the</p> <p style="text-align: right;">Page 276</p>	<p>1 contracts that we looked at on Monday? 2 A. Yes, I am. 3 MR. WINE: Same objection to the 4 extent that we're referring to documents that exist 5 in a record now of 153 documents without 6 identifying it with greater specificity. 7 Also, to the extent that this line 8 of questioning is not reflected in the witness' 9 expert report, it exceeds the scope of that report 10 and is, therefore, inadmissible. 11 BY MR. BARR: 12 Q. Now, Mr. Jordan, yesterday we marked a 13 number of Ryan annual reports, and those were 14 Exhibits 13, 14, 15, and 17 for the years 1940, 15 '41, '42, and '43 and '44, so that would be 16 Exhibit 18. 17 Do you recall our looking at these Ryan 18 annual reports? 19 MR. WINE: Objection to the extent 20 it calls for speculation. The documents that have 21 been marked and are going to be referenced, and 22 testimony has been elicited. We should look at the</p> <p style="text-align: right;">Page 278</p>

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<p>1 specific documents if there is going to be</p> <p>2 questions about them.</p> <p>3 A. Yes, I do.</p> <p>4 BY MR. BARR:</p> <p>5 Q. Okay. Now, let me mark as an additional</p> <p>6 annual report the 1945 annual report, which I</p> <p>7 neglected to mark yesterday.</p> <p>8 MR. WINE: TDY asserts the same</p> <p>9 objections with respect to Exhibit 154 as it did to</p> <p>10 the earlier referenced exhibits. I believe Counsel</p> <p>11 referred to Exhibits 13, 14, 15, and 17.</p> <p>12 MR. BARR: And 18.</p> <p>13 MR. WINE: And 18.</p> <p>14 (Exhibit No. 154 marked)</p> <p>15 BY MR. BARR:</p> <p>16 Q. And, Mr. Jordan, for each of the</p> <p>17 referenced stockholder annual reports, did you</p> <p>18 examine the balance sheets in each of these</p> <p>19 reports?</p> <p>20 A. Yes, I did.</p> <p>21 Q. And did you observe anything with</p> <p>22 respect to progress payments on those balance</p> <p style="text-align: right;">Page 279</p>	<p>1 MR. WINE: Objection, calls for a</p> <p>2 legal conclusion, assumes facts not in evidence and</p> <p>3 goes to an ultimate issue. Also exceeds the scope</p> <p>4 of the witness' expert report and is, therefore,</p> <p>5 inadmissible.</p> <p>6 A. I saw no evidence whatsoever that any of</p> <p>7 the contractor requests for progress payments</p> <p>8 included requests for reimbursement for hazardous</p> <p>9 materials.</p> <p>10 BY MR. BARR:</p> <p>11 Q. And as to cost reimbursement type</p> <p>12 contracts, is that also your opinion?</p> <p>13 MR. WINE: Same objections; calls</p> <p>14 for a legal conclusion.</p> <p>15 A. Yes, it is.</p> <p>16 BY MR. BARR:</p> <p>17 Q. And in your opinion based on your</p> <p>18 training and experience in the post-war period, did</p> <p>19 the available documents permit a conclusion that</p> <p>20 hazardous substances were among the materials to</p> <p>21 which the government had title during the war?</p> <p>22 MR. WINE: Same set of objections;</p> <p style="text-align: right;">Page 281</p>
<p>1 sheets?</p> <p>2 MR. WINE: Objection, vague and</p> <p>3 ambiguous, also beyond the scope of the witness'</p> <p>4 expert report and beyond his area of expertise.</p> <p>5 A. On some of the annual reports -- and I</p> <p>6 don't recall whether they were included in that</p> <p>7 bunch -- but they had included inventories less</p> <p>8 progress payments and then for those years that</p> <p>9 they had received progress payments; and then for</p> <p>10 the years where they had not received progress</p> <p>11 payments, they did not make that deduction from the</p> <p>12 value of the inventories.</p> <p>13 MR. WINE: Again, we'll assert the</p> <p>14 documents speak for themselves and contain the best</p> <p>15 source of evidence as to the underlying</p> <p>16 information.</p> <p>17 BY MR. BARR:</p> <p>18 Q. Now, in your opinion, based on your</p> <p>19 experience and training in the post-war era, do the</p> <p>20 available documents permit a conclusion as to</p> <p>21 whether hazardous substances were among the</p> <p>22 materials for which Ryan sought cost reimbursement?</p> <p style="text-align: right;">Page 280</p>	<p>1 calls for a legal conclusion. And again, to the</p> <p>2 extent that the witness did not opine on this</p> <p>3 subject in his expert report, it exceeds the scope</p> <p>4 of his expert opinion and is, therefore,</p> <p>5 inadmissible.</p> <p>6 A. In my opinion, there was no</p> <p>7 documentation that indicated that the government</p> <p>8 had title at any point in time to any hazardous</p> <p>9 material or hazardous waste.</p> <p>10 BY MR. BARR:</p> <p>11 Q. Okay. I'd like to focus on progress</p> <p>12 payment clauses in fixed price contracts</p> <p>13 specifically. And in that regard, I'll show you a</p> <p>14 number of ASPR and FAR provisions that have been</p> <p>15 produced in this case.</p> <p>16 MR. BARR: Why don't we go off the</p> <p>17 record.</p> <p>18 THE VIDEOGRAPHER: Going off the</p> <p>19 record, 1:46.</p> <p>20 (Recess: 1:46 p.m. to 1:50 p.m.)</p> <p>21 THE VIDEOGRAPHER: Back on record,</p> <p>22 1:50.</p> <p style="text-align: right;">Page 282</p>

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<p>1 (Exhibit Nos. 155 through 171</p> <p>2 marked)</p> <p>3 BY MR. BARR:</p> <p>4 Q. Before I give you these documents,</p> <p>5 Mr. Jordan, I'll state for the record that one of</p> <p>6 these is a complete -- what we understand to be a</p> <p>7 complete copy of Appendix E, Defense Contract</p> <p>8 Financing Regulations, dated on the front page</p> <p>9 July 1, 1976, although other pages indicate</p> <p>10 subsequent amendments of certain provisions. The</p> <p>11 internal pagination is E1 through E88, and a copy</p> <p>12 of that will be produced with Bates numbers to the</p> <p>13 plaintiffs shortly.</p> <p>14 MR. WINE: While the witness is</p> <p>15 reviewing the documents, TDY asserts the same</p> <p>16 objections to this compilation of exhibits,</p> <p>17 Exhibit 155 through 171, that it has asserted with</p> <p>18 respect to prior ASPR excerpts that the government</p> <p>19 has produced.</p> <p>20 Additionally, at least some of the</p> <p>21 exhibits -- in particular Exhibit 155 -- appear to</p> <p>22 be pages from various ASPRs going over a period of</p> <p style="text-align: right;">Page 283</p>	<p>1 A. They represent parts of the Appendix E</p> <p>2 on financing, and then there is also specific ASPR</p> <p>3 clauses for progress payments.</p> <p>4 BY MR. BARR:</p> <p>5 Q. And does the time period cover both the</p> <p>6 period of the ASPRs after World War II through the</p> <p>7 relevant period in which the FARs were in effect?</p> <p>8 MR. WINE: Objection, assumes facts</p> <p>9 not in evidence. The set is incomplete.</p> <p>10 A. Yes, they do.</p> <p>11 BY MR. BARR:</p> <p>12 Q. Now, let's focus on FAR. And I don't</p> <p>13 think we need to refer specifically to particular</p> <p>14 exhibits, but do you recall which section of the</p> <p>15 FAR pertained to title to property?</p> <p>16 MR. WINE: Objection, calls for a</p> <p>17 legal conclusion.</p> <p>18 A. Those provisions are contained in the</p> <p>19 government property clause in Appendix E on</p> <p>20 financing.</p> <p>21 BY MR. BARR:</p> <p>22 Q. And what about the FAR? Was there a</p> <p style="text-align: right;">Page 285</p>
<p>1 years and does not appear to be -- it appears to be</p> <p>2 a compilation. It does not appear to be a single,</p> <p>3 unitary document, but it's difficult to tell given</p> <p>4 the manner in which it's been produced. We assert</p> <p>5 the same objections.</p> <p>6 Additionally, the materials produced</p> <p>7 cover a variety of time periods in a variety of</p> <p>8 orders, jumping back and forth during various</p> <p>9 periods of time, most of which seem to predate the</p> <p>10 late 1950s.</p> <p>11 A. Okay.</p> <p>12 BY MR. BARR:</p> <p>13 Q. Mr. Jordan, now that you've had a chance</p> <p>14 to review these -- the set of exhibits, is it fair</p> <p>15 to say, in order to summarize this, that these</p> <p>16 are -- or contain or are the FAR and ASPR</p> <p>17 provisions relating to progress payments and fixed</p> <p>18 priced contracts?</p> <p>19 MR. WINE: Objection, assumes facts</p> <p>20 not in evidence, mischaracterizes the documents,</p> <p>21 calls for a legal conclusion. The documents are an</p> <p>22 incomplete set for an incomplete period of time.</p> <p style="text-align: right;">Page 284</p>	<p>1 part of section -- Part 52?</p> <p>2 MR. WINE: Objection, leading.</p> <p>3 A. Yes, I believe there was.</p> <p>4 BY MR. BARR:</p> <p>5 Q. Do you recall the section number?</p> <p>6 MR. WINE: Objection.</p> <p>7 A. Not specifically, no.</p> <p>8 BY MR. BARR:</p> <p>9 Q. If I could have that group of documents</p> <p>10 back from you for one moment.</p> <p>11 Let me direct your attention to</p> <p>12 Exhibit 164.</p> <p>13 A. Okay.</p> <p>14 Q. Do you see the reference to</p> <p>15 Section 52.232-16?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Is there a subsection within that</p> <p>18 section which refers to title to property?</p> <p>19 A. Yes.</p> <p>20 Q. And what subsection is that?</p> <p>21 A. Subsection D.</p> <p>22 Q. Well, let's step back for a minute and</p> <p style="text-align: right;">Page 286</p>

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<p>1 ask: Based on your training and experience, what</p> <p>2 have been the basic uses and purposes of progress</p> <p>3 payment clauses?</p> <p>4 MR. WINE: Objection, calls for</p> <p>5 legal conclusion, exceeds the scope of the witness'</p> <p>6 area of expertise, goes beyond the opinions</p> <p>7 articulated in his expert report and are,</p> <p>8 therefore, inadmissible.</p> <p>9 A. As a contracting officer, we included</p> <p>10 progress payment provisions in contracts upon</p> <p>11 request of the contractor for progress payments as</p> <p>12 a means to provide financing to the contractor for</p> <p>13 performance of the contract.</p> <p>14 BY MR. BARR:</p> <p>15 Q. And in providing this financing, was</p> <p>16 there an understanding that you had as to what</p> <p>17 kinds of property were involved in financing?</p> <p>18 MR. WINE: Objection, relevance,</p> <p>19 also goes to an ultimate issue, calls for a legal</p> <p>20 conclusion, goes beyond the scope of the witness'</p> <p>21 expert report and is, therefore, inadmissible.</p> <p>22 A. My understanding as a contracting</p> <p style="text-align: right;">Page 287</p>	<p>1 BY MR. BARR:</p> <p>2 Q. Would you look at Subsection D again?</p> <p>3 MR. WINE: We're in Exhibit 164?</p> <p>4 MR. BARR: Correct.</p> <p>5 MR. WINE: What Bates page are you</p> <p>6 on?</p> <p>7 THE WITNESS: 1677.</p> <p>8 A. I misspoke. It does speak to -- speak</p> <p>9 to title.</p> <p>10 MR. WINE: I will object to the line</p> <p>11 of questioning to the extent that the document</p> <p>12 speaks for itself. It also calls for a legal</p> <p>13 conclusion.</p> <p>14 BY MR. BARR:</p> <p>15 Q. Now, are you familiar with the term</p> <p>16 "liquidation of progress payments"?</p> <p>17 MR. WINE: Objection, calls for a</p> <p>18 legal conclusion.</p> <p>19 A. Yes, I am.</p> <p>20 BY MR. BARR:</p> <p>21 Q. Could you explain that for the Court?</p> <p>22 MR. WINE: Same objection.</p> <p style="text-align: right;">Page 289</p>
<p>1 officer was that the progress payments would be</p> <p>2 made upon those things of value that were required</p> <p>3 by the contractor for performance of the contract.</p> <p>4 And when the contractor did acquire such</p> <p>5 property that had identifiable value, then the</p> <p>6 government assumed a lien to that property in the</p> <p>7 event the contractor defaulted on payment, and we</p> <p>8 had to protect the government's interest to the</p> <p>9 monies that were advanced to the contractor through</p> <p>10 progress payments.</p> <p>11 BY MR. BARR:</p> <p>12 Q. Now, when you say "a lien," are you</p> <p>13 trying to make a legal conclusion as to whether</p> <p>14 that was title or something less than title?</p> <p>15 MR. WINE: Objection, inherently</p> <p>16 calls for a legal conclusion.</p> <p>17 A. The language indicates a lien. Now,</p> <p>18 whether -- I am not going to make a legal</p> <p>19 conclusion as to the difference between a lien and</p> <p>20 title, but I do know that the language in the</p> <p>21 clauses spoke to a lien.</p> <p>22</p> <p style="text-align: right;">Page 288</p>	<p>1 A. Liquidation is a process that the</p> <p>2 government used to reduce the total exposure of the</p> <p>3 government to monies advanced to the contractor</p> <p>4 through progress payments by those items that had</p> <p>5 been produced by the contractor and delivered to</p> <p>6 the government.</p> <p>7 BY MR. BARR:</p> <p>8 Q. Now, when you say "liquidation is a</p> <p>9 process," who performs this liquidation process?</p> <p>10 MR. WINE: Same objection.</p> <p>11 A. Basically, the administrative</p> <p>12 contracting officer.</p> <p>13 BY MR. BARR:</p> <p>14 Q. And how would the amount of monies</p> <p>15 advanced to the contractor be liquidated?</p> <p>16 MR. WINE: Same objection.</p> <p>17 A. By reducing from that total value of</p> <p>18 monies advanced to the contractor the value of</p> <p>19 parts delivered and payments made to the contractor</p> <p>20 under the contract.</p> <p>21 BY MR. BARR:</p> <p>22 Q. Did the contractor reduce that total</p> <p style="text-align: right;">Page 290</p>

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<p>1 value of monies advanced?</p> <p>2 MR. WINE: Same objections.</p> <p>3 A. It was a process. Now, whether the</p> <p>4 contractor reduced the -- the value or it was a</p> <p>5 function of the administrative contracting</p> <p>6 officer -- it is probably a combination of the two.</p> <p>7 BY MR. BARR:</p> <p>8 Q. Did -- did the contractor repay monies</p> <p>9 advanced in the form of progress payments?</p> <p>10 MR. WINE: Objection, relevance,</p> <p>11 calls for a legal conclusion. It also exceeds the</p> <p>12 scope of the witness' opinion and expert report.</p> <p>13 A. In effect, they were reduced from the</p> <p>14 value of the property that was delivered. So, if</p> <p>15 you will, if the government had advanced \$1,000 to</p> <p>16 the contractor through progress payments, then they</p> <p>17 delivered back to the government \$1,200 of</p> <p>18 completed product, then that liquidation would</p> <p>19 amount to \$1,000 of the monies advanced to the</p> <p>20 contractor as progress payments.</p> <p>21 BY MR. BARR:</p> <p>22 Q. Is -- is another -- is a layman's way to</p> <p style="text-align: right;">Page 291</p>	<p>1 BY MR. BARR:</p> <p>2 Q. And was that essentially your</p> <p>3 understanding during the time you were a</p> <p>4 contracting officer?</p> <p>5 A. Yes, it is.</p> <p>6 Q. Now, in terms of progress payments, if</p> <p>7 the government advances -- if the military</p> <p>8 advance -- makes progress payments or agrees to</p> <p>9 make progress payments to a contractor, does the</p> <p>10 contractor still need to go out and borrow money</p> <p>11 from commercial lenders?</p> <p>12 MR. WINE: Objection, beyond the</p> <p>13 scope of the witness' expertise, beyond the scope</p> <p>14 of his expert opinion and asserted qualifications</p> <p>15 to give an opinion, also relevance.</p> <p>16 A. It may or may not, depending upon the</p> <p>17 contractor's financial condition.</p> <p>18 BY MR. BARR:</p> <p>19 Q. Okay. Do progress payments, to the</p> <p>20 extent they're made to a contractor, save the</p> <p>21 government money?</p> <p>22 MR. WINE: Same objections.</p> <p style="text-align: right;">Page 293</p>
<p>1 understand that repayment of loan?</p> <p>2 A. It operated much the same way as a loan,</p> <p>3 yes, in repayment of a loan.</p> <p>4 Q. The -- to the extent that the government</p> <p>5 took title to property, is there a way to express</p> <p>6 that in layman's terms in terms of the actions of</p> <p>7 the government?</p> <p>8 MR. WINE: Objection, vague and</p> <p>9 ambiguous.</p> <p>10 A. In layman's terms, it was a way the</p> <p>11 government, through operation of the progress</p> <p>12 payments clause, protected its interest in the</p> <p>13 monies paid to the contractor under progress</p> <p>14 payments.</p> <p>15 BY MR. BARR:</p> <p>16 Q. Is another way to put that a security or</p> <p>17 to -- or securing its interests?</p> <p>18 MR. WINE: Objection, leading, also</p> <p>19 calls for a legal conclusion, assumes facts not in</p> <p>20 evidence.</p> <p>21 A. Yes, it is.</p> <p>22</p> <p style="text-align: right;">Page 292</p>	<p>1 A. Based on my experience and training,</p> <p>2 yes, they do.</p> <p>3 BY MR. BARR:</p> <p>4 Q. In what way or ways?</p> <p>5 MR. WINE: Same objections.</p> <p>6 A. It provides financing to the contractor</p> <p>7 for performance of the contract. It makes it</p> <p>8 easier for the contractor to complete the contract</p> <p>9 as negotiated and awarded, and it, if you will,</p> <p>10 assures that the contractor will deliver the</p> <p>11 products on time. It reduces from the contractor</p> <p>12 expenses interest, even though interest itself is</p> <p>13 not an allowable item of cost, and just assures</p> <p>14 that the contractor will produce the -- the</p> <p>15 contracted for items.</p> <p>16 BY MR. BARR:</p> <p>17 Q. In the operation of the progress payment</p> <p>18 clause, are all the progress payments ultimately</p> <p>19 repaid by the contractor?</p> <p>20 MR. WINE: Objection, calls for a</p> <p>21 legal conclusion.</p> <p>22 A. Unless the contractor defaults on the</p> <p style="text-align: right;">Page 294</p>

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<p>1 contract and we have to pursue termination for</p> <p>2 default.</p> <p>3 BY MR. BARR:</p> <p>4 Q. Okay. Let's focus in a little more</p> <p>5 detail on 52.232-16(d)(6). And again, you can look</p> <p>6 at that same exhibit.</p> <p>7 A. And that was in what exhibit?</p> <p>8 Q. I believe that was in 164.</p> <p>9 A. Okay.</p> <p>10 Q. Have you found 16(d)(6)?</p> <p>11 MR. BARR: Off the record.</p> <p>12 THE VIDEOGRAPHER: Going off the</p> <p>13 record, 2:15.</p> <p>14 (Recess: 2:15 p.m. to 2:15 p.m.)</p> <p>15 THE VIDEOGRAPHER: Back on record,</p> <p>16 2:15.</p> <p>17 A. Okay. That paragraph is on Bates number</p> <p>18 ending in numbers 1678.</p> <p>19 BY MR. BARR:</p> <p>20 Q. Okay. Let me ask you if you could</p> <p>21 translate that into layman's terms.</p> <p>22 MR. WINE: Objection, calls for a</p> <p style="text-align: right;">Page 295</p>	<p>1 52.232-16(d)(6) in the ASPRs?</p> <p>2 A. Yes, there were.</p> <p>3 MR. WINE: Objection, calls for a</p> <p>4 legal conclusion.</p> <p>5 BY MR. BARR:</p> <p>6 Q. And have we marked as exhibits in this</p> <p>7 last group of exhibits such ASPR provisions?</p> <p>8 MR. WINE: Objection, assumes facts</p> <p>9 not in evidence.</p> <p>10 A. I believe we have.</p> <p>11 MR. BARR: I think this would be a</p> <p>12 good time for us to take a break.</p> <p>13 THE VIDEOGRAPHER: Going off the</p> <p>14 record, 2:18.</p> <p>15 (Recess: 2:18 p.m. to 2:34 p.m.)</p> <p>16 THE VIDEOGRAPHER: Back on record,</p> <p>17 2:34.</p> <p>18 (Exhibit Nos. 172 through 192</p> <p>19 marked)</p> <p>20 BY MR. BARR:</p> <p>21 Q. All right. Mr. Jordan, while we were</p> <p>22 off the record, we took the opportunity to mark a</p> <p style="text-align: right;">Page 297</p>
<p>1 legal conclusion and a legal analysis. The</p> <p>2 regulation speaks for itself.</p> <p>3 A. When the contractor completes all of its</p> <p>4 obligations to the government and finishes delivery</p> <p>5 of all the supplies called for in that contract,</p> <p>6 then the title to all residual property not</p> <p>7 delivered to and accepted by the government or</p> <p>8 incorporated into the supplies accepted --</p> <p>9 delivered to and accepted by the government shall</p> <p>10 vest in the contractor.</p> <p>11 BY MR. BARR:</p> <p>12 Q. Now, as you read that, does that</p> <p>13 include -- does the property that -- where title</p> <p>14 vested in the contractor, does that include</p> <p>15 chemical waste?</p> <p>16 MR. WINE: Objection, calls for a</p> <p>17 legal conclusion, assumes facts not in evidence.</p> <p>18 A. Since that chemical waste would not be</p> <p>19 part of the product delivered to and accepted by</p> <p>20 the government, yes, it would.</p> <p>21 BY MR. BARR:</p> <p>22 Q. Now, were there parallel provisions to</p> <p style="text-align: right;">Page 296</p>	<p>1 number of additional exhibits. We'll get to those</p> <p>2 in just a moment.</p> <p>3 But before we get off the subject of</p> <p>4 progress payments in the context of fixed priced</p> <p>5 contracts, I wanted to shift our focus to the term</p> <p>6 "scrap."</p> <p>7 Was "scrap" a term that had a particular</p> <p>8 meaning in the context of government defense</p> <p>9 contracting?</p> <p>10 A. Yes, it did.</p> <p>11 Q. Were there provisions pertaining to</p> <p>12 scrap in the ASPRs and FARs pertaining to scrap?</p> <p>13 MR. WINE: Objection, the documents</p> <p>14 speak for themselves, assumes facts not in</p> <p>15 evidence, calls for a legal conclusion.</p> <p>16 A. Yes, there were.</p> <p>17 BY MR. BARR:</p> <p>18 Q. And have we included in the group of</p> <p>19 documents that we marked earlier which provide for</p> <p>20 the handling of scrap?</p> <p>21 MR. WINE: Same objections.</p> <p>22 A. Yes.</p> <p style="text-align: right;">Page 298</p>

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<p>1 BY MR. BARR:</p> <p>2 Q. And in terms of the handling of scrap,</p> <p>3 could you summarize what those provisions in the</p> <p>4 ASPRs and FARs provided?</p> <p>5 MR. WINE: Objection, assumes facts</p> <p>6 not in evidence, calls for a legal conclusion. The</p> <p>7 documents speak for themselves and are the best</p> <p>8 source of information and, therefore, should be</p> <p>9 read in their entirety rather than summarized. It</p> <p>10 also exceeds the scope of the witness' expert</p> <p>11 report.</p> <p>12 A. Based on my experience, scrap was that</p> <p>13 material that had some intrinsic value, either to</p> <p>14 be sold as a complete entity or its mercurial</p> <p>15 content had some value.</p> <p>16 I specifically recall one contract that</p> <p>17 we had for overhaul of radial reciprocating</p> <p>18 engines; and during that process of overhaul of the</p> <p>19 engines, many of the components that were removed</p> <p>20 from those engines that were input for overhaul</p> <p>21 were determined to be beyond economical repair.</p> <p>22 So, therefore, they become scrap.</p> <p style="text-align: right;">Page 299</p>	<p>1 Q. When you say "back to the contract,"</p> <p>2 you're talking about the contract cost of</p> <p>3 performance?</p> <p>4 A. Yes.</p> <p>5 Q. Now, at any time during the post-war</p> <p>6 period in which the ASPRs and FARs were in effect,</p> <p>7 have you found any evidence indicating that Ryan or</p> <p>8 TRA considered chemical waste to be scrap that they</p> <p>9 could sell?</p> <p>10 MR. WINE: Objection, assumes facts</p> <p>11 not in evidence, calls for a legal conclusion.</p> <p>12 A. I found no such evidence.</p> <p>13 MR. WINE: Also goes beyond the</p> <p>14 scope of the witness' expert report and is,</p> <p>15 therefore, inadmissible.</p> <p>16 BY MR. BARR:</p> <p>17 Q. Likewise, have you found any evidence</p> <p>18 indicating that Ryan or TRA credited the cost of</p> <p>19 the sales of chemical waste against the cost of</p> <p>20 contract performance?</p> <p>21 MR. WINE: Same objections.</p> <p>22 A. I found no evidence that they even sold</p> <p style="text-align: right;">Page 301</p>
<p>1 They had significant value in material</p> <p>2 contact -- content. The contractor segregated</p> <p>3 those parts that were generated from government</p> <p>4 engines, and he would periodically conduct a sale</p> <p>5 of that scrap material and then credit the proceeds</p> <p>6 of that scrap sale back to the government contract.</p> <p>7 The provisions that are included in</p> <p>8 these provisions of the ASPR gave the authority to</p> <p>9 sell scrap without specific approval from the</p> <p>10 government and then to credit those sales back to</p> <p>11 the contract -- back to the government.</p> <p>12 BY MR. BARR:</p> <p>13 Q. Now, when you saw --</p> <p>14 MR. WINE: Object to -- object to</p> <p>15 the response as exceeding the scope of the witness'</p> <p>16 expert report in providing a legal analysis and,</p> <p>17 therefore, inadmissible.</p> <p>18 BY MR. BARR:</p> <p>19 Q. Now, when you say the proceeds being</p> <p>20 "credited," credited against what?</p> <p>21 A. Back to the contract from which the</p> <p>22 scrap was generated.</p> <p style="text-align: right;">Page 300</p>	<p>1 any chemical waste, much less credited the proceeds</p> <p>2 of those sales back to the government.</p> <p>3 BY MR. BARR:</p> <p>4 Q. All right. Let me hand you a stack of</p> <p>5 annual reports from the Ryan Aeronautical Company.</p> <p>6 We've marked these as Exhibits 172 through 192.</p> <p>7 And again, if you could, just briefly glance at</p> <p>8 these, and I'll ask you if you have reviewed these</p> <p>9 in the context of your expert work in this case,</p> <p>10 either in preparation of your report or in</p> <p>11 preparation for this deposition?</p> <p>12 MR. WINE: Counsel, we have</p> <p>13 Exhibits 172 to 193.</p> <p>14 MR. BARR: Then I misspoke.</p> <p>15 BY MR. BARR:</p> <p>16 Q. Mr. Jordan, could you look at the</p> <p>17 last --</p> <p>18 A. I have through 192.</p> <p>19 Q. Mr. Jordan, you can continue just</p> <p>20 glancing through them.</p> <p>21 MR. WINE: We've got 193 exhibits.</p> <p>22 So there's either something omitted from his set</p> <p style="text-align: right;">Page 302</p>

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<p>1 that's in our set or something extra in our set</p> <p>2 that's not in his set.</p> <p>3 MR. BARR: If you don't mind -- yes.</p> <p>4 You have two copies of the report for 1947.</p> <p>5 MR. WINE: Okay.</p> <p>6 MR. MATEER: I'll renumber.</p> <p>7 MR. WINE: Okay. We'll take care of</p> <p>8 it.</p> <p>9 MR. BARR: So we'll just mark this</p> <p>10 out of order as the Exhibit --</p> <p>11 MR. WINE: No, you don't have to</p> <p>12 remark anything. We have to remark our copy,</p> <p>13 unless his appears twice as well.</p> <p>14 MR. BARR: Well, his may be missing,</p> <p>15 the 1947.</p> <p>16 MR. WINE: That means that the</p> <p>17 numbering is -- yeah. Right.</p> <p>18 MR. BARR: No. Actually, let me</p> <p>19 take that back. There are two versions, one</p> <p>20 produced by the government with U.S. Bates numbers</p> <p>21 and one produced by TDY. So let's use the one that</p> <p>22 has 173 on it.</p> <p style="text-align: right;">Page 303</p>	<p>1 BY MR. BARR:</p> <p>2 Q. And you have reviewed these annual</p> <p>3 reports in connection with your work in this case?</p> <p>4 MR. WINE: You're talking about his</p> <p>5 work as a 30(b)(6) witness or an expert witness?</p> <p>6 MR. BARR: Expert.</p> <p>7 A. I recall reviewing all of these reports</p> <p>8 prior to today.</p> <p>9 BY MR. BARR:</p> <p>10 Q. And did you review these in the context</p> <p>11 of preparing for your testimony today?</p> <p>12 A. Yes, I did.</p> <p>13 MR. WINE: Objection.</p> <p>14 BY MR. BARR:</p> <p>15 Q. And as we discussed in the context of</p> <p>16 the World War II annual reports, did you review the</p> <p>17 balance sheets of the company that are contained in</p> <p>18 these annual reports?</p> <p>19 A. Yes, I did.</p> <p>20 Q. And did you observe -- make an</p> <p>21 observation as to notations regarding progress</p> <p>22 payments in those balance sheets?</p> <p style="text-align: right;">Page 305</p>
<p>1 MR. WINE: But then that doesn't</p> <p>2 explain why there's one more in his set than there</p> <p>3 is in ours.</p> <p>4 MR. BARR: Well, no. There was one</p> <p>5 more in yours. This is off the record, please.</p> <p>6 THE VIDEOGRAPHER: Going off the</p> <p>7 record, 2:43.</p> <p>8 (Recess: 2:43 p.m. to 2:53 p.m.)</p> <p>9 THE VIDEOGRAPHER: Back on record,</p> <p>10 2:53.</p> <p>11 BY MR. BARR:</p> <p>12 Q. Mr. Jordan, I appreciate your patience</p> <p>13 in taking the time to walk through these exhibits.</p> <p>14 These are all annual reports from the</p> <p>15 Ryan Aeronautical Company, are they not?</p> <p>16 MR. WINE: Objection, foundation,</p> <p>17 assumes facts not in evidence. Also, to the extent</p> <p>18 that the documents were not referenced in or cited</p> <p>19 by the expert in his expert report, they're</p> <p>20 inadmissible.</p> <p>21 A. Yes, they are.</p> <p>22</p> <p style="text-align: right;">Page 304</p>	<p>1 MR. WINE: Objection to the extent</p> <p>2 that it exceeds the area of expertise of the</p> <p>3 witness and goes beyond the areas in which he is</p> <p>4 qualified to give an opinion.</p> <p>5 Also, to the extent that it offers</p> <p>6 opinion testimony that is not contained in his</p> <p>7 expert report, it is inadmissible as such.</p> <p>8 A. On those portions of the -- of the</p> <p>9 reports that speak to assets, on certain years,</p> <p>10 they have the value of the assets listed, and then</p> <p>11 it says, "less progress payments received."</p> <p>12 Apparently those are years in which they</p> <p>13 received progress payments, and for the years that</p> <p>14 they did not receive progress payments, there is no</p> <p>15 deduction for progress payments received.</p> <p>16 MR. WINE: Object to the response to</p> <p>17 the extent that it assumes facts not in evidence to</p> <p>18 which there is not a proper foundation, calls for</p> <p>19 speculation.</p> <p>20 BY MR. BARR:</p> <p>21 Q. All right. Let's talk about title</p> <p>22 provisions as they relate to cost reimbursement</p> <p style="text-align: right;">Page 306</p>

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<p>1 contracts.</p> <p>2 MR. BARR: We can go off the record.</p> <p>3 THE VIDEOGRAPHER: Going off the</p> <p>4 record, 2:56.</p> <p>5 (Recess 2:56 p.m. to 2:59 p.m.)</p> <p>6 THE VIDEOGRAPHER: Back on record,</p> <p>7 2:59.</p> <p>8 (Exhibit Nos. 193 through 198</p> <p>9 marked)</p> <p>10 BY MR. BARR:</p> <p>11 Q. Mr. Jordan, I'm handing you another set</p> <p>12 of ASPR and FAR provisions. I'll ask you to just</p> <p>13 briefly review those, and then I'll ask you if you</p> <p>14 have seen those before.</p> <p>15 MR. WINE: While the witness reviews</p> <p>16 the documents, TDY asserts the same objections that</p> <p>17 it has for prior excerpts of ASPRs and notes that</p> <p>18 the exhibits marked, Jordan Exhibits 193 through</p> <p>19 198, pertain to the years 1968, 1969, 1976, 1984,</p> <p>20 1990, and 1997.</p> <p>21 A. Okay.</p> <p>22</p> <p style="text-align: right;">Page 307</p>	<p>1 document speaks for itself and is the best source</p> <p>2 of evidence in response to Counsel's question,</p> <p>3 calls for a legal conclusion.</p> <p>4 A. The paragraph contained on Bates number</p> <p>5 4278 --</p> <p>6 BY MR. BARR:</p> <p>7 Q. In what exhibit?</p> <p>8 A. Exhibit No. 193, Paragraph C.</p> <p>9 And I will quote it: "Title to all</p> <p>10 property furnished by the government shall remain</p> <p>11 in the government. Title to all property purchased</p> <p>12 by the contractor for the cost of which the</p> <p>13 contractor is entitled to be reimbursed as a direct</p> <p>14 item of cost under this contract shall pass to and</p> <p>15 vest in the government upon delivery of such</p> <p>16 property by the vendor."</p> <p>17 And I underscore the "direct item of</p> <p>18 cost," and that is representative of the same</p> <p>19 provision in the other editions of the ASPR and the</p> <p>20 other exhibits that you gave me.</p> <p>21 Q. Including the FAR?</p> <p>22 A. Yes.</p> <p style="text-align: right;">Page 309</p>
<p>1 BY MR. BARR:</p> <p>2 Q. Mr. Jordan, do these ASPR and FAR</p> <p>3 excerpts pertain to cost reimbursement contracts?</p> <p>4 MR. WINE: Objection, the documents</p> <p>5 speak for themselves, calls for a legal conclusion.</p> <p>6 A. Yes, they do.</p> <p>7 BY MR. BARR:</p> <p>8 Q. During the course of your career as a</p> <p>9 government contracting officer, were you familiar</p> <p>10 with these provisions?</p> <p>11 A. Yes, I was.</p> <p>12 Q. Do these provisions contain -- do these</p> <p>13 sections of the FAR and the ASPR contain provisions</p> <p>14 relating to the passage of title?</p> <p>15 MR. WINE: Objection, document</p> <p>16 speaks for itself, calls for a legal conclusion.</p> <p>17 A. Yes, they do.</p> <p>18 BY MR. BARR:</p> <p>19 Q. And if you could, summarize how and to</p> <p>20 what the government took title pursuant to such</p> <p>21 provisions.</p> <p>22 MR. WINE: Same objection; this</p> <p style="text-align: right;">Page 308</p>	<p>1 MR. WINE: Objection, again, insofar</p> <p>2 as the exhibits provided in 193 and 198 are an</p> <p>3 incomplete set of documents.</p> <p>4 BY MR. BARR:</p> <p>5 Q. To the extent we're missing any editions</p> <p>6 in this set of exhibits, Mr. Jordan, is it your</p> <p>7 understanding that these provisions changed in</p> <p>8 those other so-called missing editions?</p> <p>9 MR. WINE: Objection, calls for</p> <p>10 speculation, calls for a legal conclusion. The</p> <p>11 best source of evidence is the document themselves,</p> <p>12 which has not been introduced into evidence, and</p> <p>13 therefore the witness should not be permitted to</p> <p>14 testify about documents that have not been</p> <p>15 presented.</p> <p>16 A. Based upon my knowledge of the</p> <p>17 regulations, it would not be affected by other</p> <p>18 provisions of the ASPR that are not included in</p> <p>19 these exhibits.</p> <p>20 BY MR. BARR:</p> <p>21 Q. Well --</p> <p>22 MR. WINE: Objection, not</p> <p style="text-align: right;">Page 310</p>

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<p>1 responsive.</p> <p>2 BY MR. BARR:</p> <p>3 Q. The question is a little bit different,</p> <p>4 Mr. Jordan. To the extent we don't have editions</p> <p>5 of the ASPRs or the FARs in this group of</p> <p>6 documents, would the provisions, based on your</p> <p>7 experience, have changed in those editions and then</p> <p>8 reverted back to the form in which we have in front</p> <p>9 of us?</p> <p>10 MR. WINE: Same objections; calls</p> <p>11 for speculation.</p> <p>12 A. They would not.</p> <p>13 BY MR. BARR:</p> <p>14 Q. To the title provision as you understood</p> <p>15 them when you were a government contracting</p> <p>16 officer, were these essentially based on cost</p> <p>17 accounting timing?</p> <p>18 MR. WINE: Objection, vague and</p> <p>19 ambiguous, calls for a legal conclusion, also</p> <p>20 exceeds the scope of the witness' knowledge and</p> <p>21 expertise in the area in which he's been offered as</p> <p>22 an expert witness, also seeks to provide an opinion</p> <p style="text-align: right;">Page 311</p>	<p>1 MR. BARR: Actually, why don't we</p> <p>2 just take a quick break. That will -- that will</p> <p>3 solve my problem.</p> <p>4 THE VIDEOGRAPHER: Going off record,</p> <p>5 3:10.</p> <p>6 (Recess: 3:10 p.m. to 3:21 p.m.)</p> <p>7 THE VIDEOGRAPHER: Back on record,</p> <p>8 3:21.</p> <p>9 BY MR. BARR:</p> <p>10 Q. Mr. Jordan, I'm going to ask you to</p> <p>11 look, please, at what we've marked as -- I believe</p> <p>12 it is Exhibits 193, 94, 95, 96, and 98. 193 is</p> <p>13 missing from that stack. So I'm going to hand that</p> <p>14 to you now.</p> <p>15 A. Okay. That's why I couldn't find it.</p> <p>16 Q. For your convenience, I've put a red</p> <p>17 tape flag next to provisions relating to final</p> <p>18 accounting.</p> <p>19 MR. WINE: What Bates numbers,</p> <p>20 Counsel?</p> <p>21 THE WITNESS: On Exhibit No. 193,</p> <p>22 it's Bates number 4281.</p> <p style="text-align: right;">Page 313</p>
<p>1 that's not contained in his expert report and is,</p> <p>2 therefore, inadmissible.</p> <p>3 A. It would be based upon timing and the</p> <p>4 type of material for which payment was made.</p> <p>5 BY MR. BARR:</p> <p>6 Q. Would it also depend -- would the</p> <p>7 passage of title also depend on the ability of the</p> <p>8 contractor to identify the property to a specific</p> <p>9 cost reimbursable contract?</p> <p>10 MR. WINE: Same objections.</p> <p>11 A. Very definitely it would.</p> <p>12 BY MR. BARR:</p> <p>13 Q. Mr. Jordan, let me direct your attention</p> <p>14 to Exhibits 194, 195, and 196.</p> <p>15 A. Okay.</p> <p>16 Q. And let's start with 194. If you would,</p> <p>17 look at the page pertaining to -- well, ending in</p> <p>18 the Bates numbers 61. Actually, strike that.</p> <p>19 Let's come back to that. I apologize.</p> <p>20 Mr. Jordan --</p> <p>21 A. Okay.</p> <p>22 Q. -- we're going to come back to that.</p> <p style="text-align: right;">Page 312</p>	<p>1 MR. WINE: Thank you, Mr. Jordan.</p> <p>2 THE WITNESS: On 194, it's</p> <p>3 Bates 160.</p> <p>4 MR. WINE: Thank you, sir.</p> <p>5 BY MR. BARR:</p> <p>6 Q. Actually, to speed this up, rather than</p> <p>7 have you do it, Mr. Jordan, it should be</p> <p>8 Subparagraph (i) on each of those exhibits. That's</p> <p>9 little Roman (i).</p> <p>10 MR. WINE: And we're not looking at</p> <p>11 little Roman numeral (i) in Exhibit 197 for this</p> <p>12 examination?</p> <p>13 MR. BARR: No, we're not.</p> <p>14 A. Okay.</p> <p>15 BY MR. BARR:</p> <p>16 Q. Now, Mr. Jordan, these provisions, as I</p> <p>17 read it -- and just so we can summarize it, the --</p> <p>18 is it your understanding that the substance of</p> <p>19 these provisions remain constant over time?</p> <p>20 MR. WINE: Objection, the documents</p> <p>21 speak for themselves. It calls for a legal</p> <p>22 conclusion. Also, to the extent that one of the</p> <p style="text-align: right;">Page 314</p>

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<p>1 documents in the series is not included goes to the</p> <p>2 question being asked to the witness.</p> <p>3 A. To the best of my knowledge, yes.</p> <p>4 BY MR. BARR:</p> <p>5 Q. Now, would you look at Exhibit 197 and</p> <p>6 see if you can find this final accounting</p> <p>7 provision.</p> <p>8 Have you found it, Mr. Jordan?</p> <p>9 A. Not yet.</p> <p>10 MR. WINE: You can direct him to a</p> <p>11 page, if you want. 431.</p> <p>12 BY MR. BARR:</p> <p>13 Q. Let me come around and show you --</p> <p>14 A. I thinks it's 14, 1 -- 431.</p> <p>15 Q. Okay. Yeah. If you will please review</p> <p>16 that, we'll include that in the questioning.</p> <p>17 A. Okay.</p> <p>18 Q. Having looked at Exhibit -- the clause</p> <p>19 little Roman (i) in 190 -- in Exhibit 197, did you</p> <p>20 detect any material differences in the language in</p> <p>21 the clause there compared to the other exhibits</p> <p>22 that I directed your attention to?</p> <p style="text-align: right;">Page 315</p>	<p>1 actions or events?</p> <p>2 MR. WINE: Objection, the document</p> <p>3 speaks for itself, calls for a legal conclusion,</p> <p>4 beyond the scope of the witness' expertise and</p> <p>5 beyond the scope of his expert opinion.</p> <p>6 A. Yes, they do.</p> <p>7 BY MR. BARR:</p> <p>8 Q. Have you found any evidence in the</p> <p>9 record in this case that any of those events</p> <p>10 occurred with respect to Ryan or TRA?</p> <p>11 MR. WINE: Objection, assumes fact</p> <p>12 not in evidence, goes beyond the area of expertise</p> <p>13 of the witness and goes beyond the scope of his</p> <p>14 expert opinion.</p> <p>15 Moreover, Counsel has not offered</p> <p>16 sufficient basis for which to elicit an opinion</p> <p>17 from the witness. Therefore, it's inadmissible.</p> <p>18 A. Based upon the documents I reviewed, I</p> <p>19 saw no such evidence.</p> <p>20 BY MR. BARR:</p> <p>21 Q. Now, did you determine in your review of</p> <p>22 contemporaneous documents in the record in this</p> <p style="text-align: right;">Page 317</p>
<p>1 MR. WINE: Same objections; the</p> <p>2 documents speak for themselves, calls for a legal</p> <p>3 conclusion, goes beyond the scope of the witness'</p> <p>4 expert report and area of expertise.</p> <p>5 A. Not that I noted.</p> <p>6 BY MR. BARR:</p> <p>7 Q. Were you familiar with these various</p> <p>8 provisions -- they're different numbers, but were</p> <p>9 you familiar with the provisions in their -- with</p> <p>10 their various numbering over the course of your</p> <p>11 career as a government contracting officer?</p> <p>12 A. I'm basically familiar, yes.</p> <p>13 MR. WINE: Objection with respect to</p> <p>14 any opinions or testimony given to the extent that</p> <p>15 the witness has qualified his knowledge as basic or</p> <p>16 basic familiarity, therefore, not qualified to</p> <p>17 offer opinion on the subject matter being elicited</p> <p>18 by Counsel.</p> <p>19 BY MR. BARR:</p> <p>20 Q. Now, in these clauses, is it fair to say</p> <p>21 that each of them in their various numberings call</p> <p>22 for or refer to a number of different kinds of</p> <p style="text-align: right;">Page 316</p>	<p>1 case whether or not TRA and Ryan personnel ever</p> <p>2 considered the processing chemicals or chemical</p> <p>3 waste to be government property at any time?</p> <p>4 MR. WINE: Objection. Same</p> <p>5 objections as before; also calls for a legal</p> <p>6 conclusion, assumes facts not in evidence, calls</p> <p>7 for -- seeks an opinion from the witness for which</p> <p>8 there is an insufficient basis for such an opinion</p> <p>9 and goes beyond the scope of his expert report and</p> <p>10 is, therefore, inadmissible.</p> <p>11 A. Based upon the volume of documents I</p> <p>12 reviewed, I saw no such evidence.</p> <p>13 BY MR. BARR:</p> <p>14 Q. And similarly -- a similar question:</p> <p>15 Did you determine in your review of contemporaneous</p> <p>16 documents in this case as to whether any government</p> <p>17 personnel ever considered the processing chemicals</p> <p>18 or chemical waste at the Ryan plant or the TRA</p> <p>19 plant to be government property at any time?</p> <p>20 MR. WINE: Same objections.</p> <p>21 A. Based upon the volume of documents that</p> <p>22 I reviewed, I saw no such evidence.</p> <p style="text-align: right;">Page 318</p>

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<p>1 BY MR. BARR:</p> <p>2 Q. Now, in your 30 plus years of experience</p> <p>3 in Air Force contracting, can you recall any</p> <p>4 instance in which processing chemicals or their</p> <p>5 wastes were understood to be government property?</p> <p>6 MR. WINE: Objection, calls for a</p> <p>7 legal conclusion, goes to the ultimate issue in the</p> <p>8 case, goes beyond the scope of the witness' expert</p> <p>9 report, goes beyond the area of his expertise, and</p> <p>10 lacks a sufficient basis for which he can give an</p> <p>11 opinion.</p> <p>12 A. Based upon my 30 plus years of</p> <p>13 experience in government contracting, I saw no</p> <p>14 examples where the government or the contractor</p> <p>15 considered hazardous chemical waste to be</p> <p>16 government property.</p> <p>17 MR. WINE: Objection insofar as the</p> <p>18 response is nonresponsive to Counsel's question.</p> <p>19 Counsel's question was compound and asked both as</p> <p>20 to processing chemicals as well as waste.</p> <p>21 BY MR. BARR:</p> <p>22 Q. Mr. Jordan, did you ever encounter a</p> <p style="text-align: right;">Page 319</p>	<p>1 CERTIFICATE OF SHORTHAND REPORTER</p> <p>2 I, Steven Stogel, Certified Shorthand</p> <p>3 Reporter, the officer before whom the foregoing</p> <p>4 deposition was taken, do hereby certify that the</p> <p>5 foregoing transcript is a true and correct record</p> <p>6 of the testimony given; that said testimony was</p> <p>7 taken by me stenographically and thereafter reduced</p> <p>8 to typewriting under my supervision; and that I am</p> <p>9 neither counsel for, related to, nor employed by</p> <p>10 any of the parties to this case and have no</p> <p>11 interest, financial or otherwise, in its outcome.</p> <p>12 GIVEN UNDER MY HAND AND SEAL of office</p> <p>13 on this _____ day of _____, 2011.</p> <p>14</p> <p>15</p> <p>16</p> <p>17 _____</p> <p>18 STEVEN STOGEL, CSR, CLR</p> <p>19 Texas Certified Shorthand Reporter</p> <p>20 CSR No. 6174</p> <p>21 Certified LiveNote Reporter</p> <p>22 Expiration Date: 12/31/2012</p> <p style="text-align: right;">Page 321</p>
<p>1 situation where the government or the contractor</p> <p>2 considered processing chemicals to be government</p> <p>3 property at any time?</p> <p>4 MR. WINE: Same objections.</p> <p>5 A. Not to my knowledge.</p> <p>6 MR. BARR: All right. I think we</p> <p>7 are at a convenient stopping point for today.</p> <p>8 So -- I think the witness is getting tired, and</p> <p>9 hearing no objection from the witness, I think we</p> <p>10 should adjourn.</p> <p>11 MR. WINE: I'm not going to object.</p> <p>12 THE VIDEOGRAPHER: This marks the</p> <p>13 end of today's deposition. We're going off the</p> <p>14 record at 3:33.</p> <p>15 (Deposition Recessed at 3:33 p.m.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: right;">Page 320</p>	<p>1 Tommy Jordan c/o</p> <p>2 DICKSTEIN SHAPIRO, L.L.P.</p> <p>3 1825 Eye Street NW</p> <p>4 Washington, D.C. 20006-5403</p> <p>5 Case: TDY Holdings v. United States of America</p> <p>6 Date of deposition: 10/12/11</p> <p>7 Deponent: Tommy Jordan</p> <p>8 Please be advised that the transcript in the above</p> <p>9 referenced matter is now complete and ready for signature.</p> <p>10 The deponent may come to this office to sign the transcript,</p> <p>11 a copy may be purchased for the witness to review and sign,</p> <p>12 or the deponent and/or counsel may waive the option of signing.</p> <p>13 Please advise us of the option selected.</p> <p>14 Please forward the errata sheet and the original signed</p> <p>15 signature page to counsel noticing the deposition, noting the applicable</p> <p>16 time period allowed for such by the governing Rules of Procedure.</p> <p>17 If you have any questions, please do not hesitate to call our office at</p> <p>18 (202)-232-0646.</p> <p>19 Sincerely,</p> <p>20</p> <p>21 Digital Evidence Group</p> <p>22 Copyright 2011 Digital Evidence Group</p> <p>Copying is forbidden, including electronically, absent express written consent</p> <p style="text-align: right;">Page 322</p>

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<p>1 Digital Evidence Group, L.L.C. 2 1299 Pennsylvania Ave NW, Suite 1130E 3 Washington, D.C. 20004 4 (202) 232-0646 5 6 SIGNATURE PAGE 7 8 Case Name: TDY Holdings v. United States of America 9 Witness Name: Tommy Jordan 10 Deposition Date: 10/12/11 11 I do hereby acknowledge that I have read 12 and examined the foregoing pages 13 of the transcript of my deposition and that: 14 (Check appropriate box): 15 () The same is a true, correct and 16 complete transcription of the answers given by 17 me to the questions therein recorded. 18 () Except for the changes noted in the 19 attached Errata Sheet, the same is a true, 20 correct and complete transcription of the 21 answers given by me to the questions therein 22 recorded.</p> <p style="text-align: center;"> DATE WITNESS SIGNATURE </p> <p style="text-align: right;">Page 323</p>	
<p>1 Digital Evidence Group, L.L.C. 2 1299 Pennsylvania Ave NW, Suite 1130E 3 Washington, D.C. 20004 4 (202) 232-0646 5 6 ERRATA SHEET 7 8 Case Name: TDY Holdings v. United States of America 9 Witness Name: Tommy Jordan 10 Deposition Date: 10/12/11 11 Page No. Line No. Change 12 13 14 15 16 17 18 19 20 21 22</p> <p style="text-align: center;"> Signature Date </p> <p style="text-align: right;">Page 324</p>	

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

TDY HOLDINGS, LLC, and	§
TDY INDUSTRIES, INC.	§
	§
Plaintiffs,	§
	§
VS.	§ Case No. 07cv0787 JAH
	§
UNITED STATES OF AMERICA,	§
UNITED STATES DEPARTMENT	§
OF DEFENSE, and ROBERT M.	§
GATES, in his official	§
capacity as SECRETARY OF	§
DEFENSE	§
	§
Defendants.	§

Videotaped Deposition of
TOMMY B. JORDAN
VOLUME 3
San Antonio, Texas
Friday, October 14, 2011
9:56 a.m.

Reported by: Steven Stogel, CSR, CLR

DIGITAL EVIDENCE GROUP
1299 Pennsylvania Ave, NW, Suite 1130E
Washington, DC 20004
(202) 232-0646

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11	Lewis M. Barr	11	No. 1 to Registration Statement
12	U.S. DEPARTMENT OF JUSTICE	12	Under the Securities Act of 1933
13	601 D Street NW, Suite 8000	13	Bates TDYRYAN00002029 -
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18	Bates US0159173 - US0159177	18	Wagner Bates US2002047
19	Exhibit 223 7/1/76 ASPR Excerpt 374	19	Exhibit 242 3/21/60 Letter from R.R. 422
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<p>1 DEPOSITION EXHIBITS 2 TOMMY B. JORDAN 3 October 14, 2011</p> <p>4 NUMBER DESCRIPTION MARKED</p> <p>5 Exhibit 244 6/3/76 Teledyne Ryan 422 6 Aeronautical Inter-Department 7 Correspondence from B.J. 8 Shillito 9 Bates US0155575</p> <p>10 Exhibit 245 5/28/79 Letter from E.D. Menard 422 11 Bates US0039811 - US0039813</p> <p>12 Exhibit 246 October 1985 Comments on 422 13 Operations 14 Bates TDYRYAN20013632 - 15 TDYRYAN20013634</p> <p>16 Exhibit 247 12/6/93 Letter from Robert A.K. 422 17 Mitchell 18 Bates TDYRYAN20053773 - 19 TDYRYAN20053774</p> <p>20 Exhibit 248 8/26/80 Letter from E.C. 426 21 Chapman, Jr. 22 Bates TDYRYAN20058647 - TDYRYAN20058648</p> <p>Exhibit 249 12/3/80 Memorandum from R.S. 426 McCarter Bates TDYRYAN20056146 - TDYRYAN20056147</p> <p>Exhibit 250 4/8/93 Letter 426 Bates MDHC0000864 - MDHC0000866</p> <p>Exhibit 251 Complaint for Breach of Contract 426 Bates US0025819 - US0025832</p> <p style="text-align: right;">Page 334</p>	<p>1 ending in Bates numbers 87000 and 87002 and 3. 2 MR. WINE: While the witness is 3 reviewing the referenced pages, I'll note for the 4 record that TDY objects on the basis of foundation. 5 A. Okay. 6 BY MR. BARR: 7 Q. Mr. Jordan, are you generally familiar 8 with the nature and format and contents of a 9 contract like this? 10 A. Yes, I am. 11 Q. Mr. Jordan, I have flagged pages which 12 have references to provisions relating to 13 inspection of progress payments and military 14 security. Do you see those? 15 A. Yes, I do. 16 Q. Based on your experience, were those 17 standardized provisions? 18 MR. WINE: Objection, calls for a 19 legal conclusion. 20 A. Yes, they were. 21 BY MR. BARR: 22 Q. Now, one of the questions I have, if you</p> <p style="text-align: right;">Page 336</p>
<p>1 PROCEEDINGS 2 THE VIDEOGRAPHER: This is the start 3 of the deposition for Tommy B. Jordan, Volume 3. 4 Today is Friday, October 14th, 2011. The time on 5 record now is 9:56. 6 TOMMY B. JORDAN 7 having been previously sworn, continued to testify 8 as follows: 9 EXAMINATION (CONTINUED) 10 BY MR. BARR: 11 Q. Good morning, Mr. Jordan. 12 A. Good morning. 13 Q. I'd like to start today by tying up some 14 loose ends from the prior two days of your 15 testimony in this matter. And to do that, I'd like 16 the court reporter to mark a 1971 contract between 17 the Navy and TRA. 18 (Exhibit No. 199 marked) 19 BY MR. BARR: 20 Q. Mr. Jordan, I'm going to hand you that. 21 I have tabbed some pages near the beginning, and if 22 you would take a moment to review those pages</p> <p style="text-align: right;">Page 335</p>	<p>1 would look on Page 87000, the reference to progress 2 payment, Section F-12. 3 A. Yes. 4 Q. What does that parenthetical refer to 5 where it says, "(1969 DEC)"? 6 MR. WINE: Objection, the document 7 speaks for itself. 8 A. That is the edition of the Armed 9 Services Procurement Regulation from which that 10 clause came. 11 BY MR. BARR: 12 Q. That was Exhibit 195? 13 A. 199. 14 Q. 199. Thank you. 15 MR. BARR: In addition, I'd like to 16 mark as the next exhibit the 1976 edition of 17 Appendix B of the Armed Services Procurement 18 Regulations. 19 MR. WINE: And we'll note for the 20 record the same objections that you -- that TDY 21 raised with respect to other ASPR excerpts, as well 22 as specifically to the ASPRs relating to Appendix B</p> <p style="text-align: right;">Page 337</p>

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<p>1 previously sought to be introduced by Counsel for</p> <p>2 the United States.</p> <p>3 (Exhibit No. 200 marked)</p> <p>4 BY MR. BARR:</p> <p>5 Q. If you would, take a moment, Mr. Jordan,</p> <p>6 to take a look at that. I've tabbed a couple of</p> <p>7 pages, Pages 64768 and 6479 -- excuse me -- 791.</p> <p>8 Mr. Jordan, based on your knowledge and</p> <p>9 experience as a government contracting officer, do</p> <p>10 you recognize this as Appendix B to the ASPRs as of</p> <p>11 1976?</p> <p>12 MR. WINE: Objection, the document</p> <p>13 speaks for itself.</p> <p>14 A. Yes, I do.</p> <p>15 BY MR. BARR:</p> <p>16 Q. Does this government -- does this</p> <p>17 document, what we've marked as Exhibit 200, relate</p> <p>18 to your opinions pertaining to property</p> <p>19 administrators and the contractor's obligations</p> <p>20 concerning maintenance and care of government</p> <p>21 property?</p> <p>22 MR. WINE: Objection to the extent</p> <p style="text-align: right;">Page 338</p>	<p>1 Exchange Commission in June of 1959. I have</p> <p>2 directed your attention through tape flags to</p> <p>3 Pages 2037, 2 -- 2039, and 2041.</p> <p>4 MR. WINE: While the witness is</p> <p>5 reviewing the document, TDY objects on the basis of</p> <p>6 foundation. Also, it exceeds the scope of the</p> <p>7 witness' expert report and is, as such,</p> <p>8 inadmissible. It also exceeds the witness' area of</p> <p>9 expertise.</p> <p>10 BY MR. BARR:</p> <p>11 Q. Mr. Jordan, was this one of the</p> <p>12 documents that you consulted in the course of your</p> <p>13 expert work in this case concerning the company's</p> <p>14 use of facilities contracts as well as the nature</p> <p>15 and extent of their subcontracting work?</p> <p>16 A. Yes, it was.</p> <p>17 MR. WINE: Is that the extent of the</p> <p>18 questions on that document?</p> <p>19 MR. BARR: Yes, for now.</p> <p>20 THE REPORTER: I'm sorry. I didn't</p> <p>21 hear you.</p> <p>22 MR. WINE: I asked if that was the</p> <p style="text-align: right;">Page 340</p>
<p>1 that those opinions have not been defined in this</p> <p>2 matter -- in this deposition or in the witness'</p> <p>3 expert report. We object as vague and ambiguous.</p> <p>4 A. Yes, they do.</p> <p>5 BY MR. BARR:</p> <p>6 Q. Mr. Jordan, do you recall discussing the</p> <p>7 duties and responsibilities of property</p> <p>8 administrators on Wednesday?</p> <p>9 A. Yes, I do.</p> <p>10 Q. And the same question as to contractor</p> <p>11 maintenance and care of government property. Do</p> <p>12 you recall discussing that subject on Wednesday?</p> <p>13 MR. WINE: Same objections.</p> <p>14 A. Yes, I do.</p> <p>15 BY MR. BARR:</p> <p>16 Q. The next document I'd like you to look</p> <p>17 at -- and we'll mark this -- I guess this is</p> <p>18 Exhibit 201.</p> <p>19 (Exhibit No. 201 marked)</p> <p>20 BY MR. BARR:</p> <p>21 Q. Mr. Jordan, this is a filing by the Ryan</p> <p>22 Aeronautical Company with the Securities and</p> <p style="text-align: right;">Page 339</p>	<p>1 extent of questions on that document.</p> <p>2 BY MR. BARR:</p> <p>3 Q. Okay. Mr. Jordan, I'm going to place in</p> <p>4 front of you a one-page document produced by TDY in</p> <p>5 this litigation. It's an October 17, 1944</p> <p>6 memorandum -- a Navy memorandum. And because of</p> <p>7 the poor legibility of the document, we had it --</p> <p>8 it was retyped into your supplemental report.</p> <p>9 So I'm going to place the supplemental</p> <p>10 report, which has been marked as Exhibit 3 in this</p> <p>11 deposition, in front of you, along with this</p> <p>12 exhibit.</p> <p>13 (Exhibit No. 202 marked)</p> <p>14 MR. WINE: While the witness is</p> <p>15 reviewing the document, we'll object on the basis</p> <p>16 of foundation.</p> <p>17 A. Okay.</p> <p>18 BY MR. BARR:</p> <p>19 Q. Now, Mr. Jordan, do you recall that</p> <p>20 Dr. Carlisle referred to this document in his</p> <p>21 expert report in this matter?</p> <p>22 MR. WINE: Objection to the extent</p> <p style="text-align: right;">Page 341</p>

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<p>1 it assumes facts not in evidence.</p> <p>2 A. Yes, I do.</p> <p>3 BY MR. BARR:</p> <p>4 Q. And in your opinion based on your</p> <p>5 knowledge of government contracting, does the</p> <p>6 memorandum suggest that the Navy was exerting</p> <p>7 control over all activities of the entire company</p> <p>8 during the war?</p> <p>9 MR. WINE: Objection, lack of</p> <p>10 foundation, exceeds the area of expertise of the</p> <p>11 witness and, therefore, is inadmissible. It also</p> <p>12 calls for a legal conclusion.</p> <p>13 A. Based upon my experience and training,</p> <p>14 it does not connote or infer that the government</p> <p>15 had control of all aspects of the contractor's</p> <p>16 operation.</p> <p>17 BY MR. BARR:</p> <p>18 Q. Now, Dr. Carlisle referred to the phrase</p> <p>19 in Paragraph 2 "direct technical control" in</p> <p>20 support of his position on the subject. Do you</p> <p>21 recall that?</p> <p>22 A. Yes, I do.</p> <p style="text-align: right;">Page 342</p>	<p>1 MR. WINE: Same objections.</p> <p>2 A. Technical control, as used throughout</p> <p>3 this -- this case, refers to control of the</p> <p>4 technical aspects of the product and not of the</p> <p>5 contractor's operation.</p> <p>6 BY MR. BARR:</p> <p>7 Q. And when you say the "technical</p> <p>8 aspects," what kind of technical aspects?</p> <p>9 MR. WINE: Same objections. Also,</p> <p>10 assumes facts not in evidence.</p> <p>11 A. Performance of the product and its</p> <p>12 capability to meet the military requirements.</p> <p>13 BY MR. BARR:</p> <p>14 Q. Are these -- is another way to put that</p> <p>15 design qualities?</p> <p>16 MR. WINE: Objection, leading.</p> <p>17 A. Yes, it is.</p> <p>18 BY MR. BARR:</p> <p>19 Q. And is -- is that consistent with your</p> <p>20 experience in the course of your career?</p> <p>21 MR. WINE: Again, objection. The</p> <p>22 witness does not have experience from the World</p> <p style="text-align: right;">Page 344</p>
<p>1 MR. WINE: That assumes facts not in</p> <p>2 evidence.</p> <p>3 BY MR. BARR:</p> <p>4 Q. Now, in your opinion, do you believe</p> <p>5 that Dr. Carlisle -- and again, based on your</p> <p>6 experience as a government contracting officer, do</p> <p>7 you believe that Dr. Carlisle has interpreted this</p> <p>8 document correctly?</p> <p>9 MR. WINE: Again, assumes facts not</p> <p>10 in evidence. It's beyond the area of expertise.</p> <p>11 Dr. Carlisle has offered opinion testimony as a</p> <p>12 historian, and the witness has admitted he has no</p> <p>13 training as a historian.</p> <p>14 Also, the document was authored at a</p> <p>15 time that predated the witness' tenure in</p> <p>16 government contracting and, therefore, he lacks</p> <p>17 sufficient knowledge on which to opine.</p> <p>18 A. I do not believe that Dr. Carlisle</p> <p>19 interpreted correctly.</p> <p>20 BY MR. BARR:</p> <p>21 Q. And could you explain why you believe he</p> <p>22 is wrong?</p> <p style="text-align: right;">Page 343</p>	<p>1 War II era.</p> <p>2 A. Absolutely consistent.</p> <p>3 BY MR. BARR:</p> <p>4 Q. Okay. Now, on Wednesday the 12th, we</p> <p>5 were talking about the issues pertaining to the</p> <p>6 passage of title to the government under both cost</p> <p>7 reimbursement and fixed price contracts with</p> <p>8 progress payments.</p> <p>9 Do you recall that discussion?</p> <p>10 A. Yes, I do.</p> <p>11 Q. Did you encounter in your work in this</p> <p>12 matter a document authored by a TRA vice president</p> <p>13 stating their views on those subjects?</p> <p>14 MR. WINE: Again, we'll object as</p> <p>15 the testimony sought to be elicited by Counsel</p> <p>16 exceeds the scope of the witness' expert report and</p> <p>17 is, therefore, inadmissible.</p> <p>18 A. Yes, I did.</p> <p>19 (Exhibit No. 203 marked)</p> <p>20 MR. WINE: While the witness is</p> <p>21 reviewing the document, we'll object on the basis</p> <p>22 of foundation, also hearsay.</p> <p style="text-align: right;">Page 345</p>

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<p>1 BY MR. BARR:</p> <p>2 Q. Mr. Jordan, have you finished looking</p> <p>3 over this document?</p> <p>4 A. Yes, I have.</p> <p>5 Q. Is this the document that you had in</p> <p>6 mind?</p> <p>7 MR. WINE: Same objections.</p> <p>8 A. Yes, it is.</p> <p>9 BY MR. BARR:</p> <p>10 Q. Did this, in your opinion, set out TRA's</p> <p>11 views as to cost reimbursement and fixed price</p> <p>12 contracts regarding the passage of title of</p> <p>13 property to the government?</p> <p>14 MR. WINE: Objection, calls for</p> <p>15 speculation, hearsay, foundation, calls for a legal</p> <p>16 conclusion, exceeds the witness' area of expertise</p> <p>17 and exceeds the opinions upon which he opined or</p> <p>18 offered in his expert report and, therefore, is</p> <p>19 inadmissible.</p> <p>20 A. Yes, it does.</p> <p>21 BY MR. BARR:</p> <p>22 Q. And to summarize so that the Court can</p> <p style="text-align: right;">Page 346</p>	<p>1 case relating to military control over company</p> <p>2 operations through the use of specifications?</p> <p>3 MR. WINE: Object to the extent that</p> <p>4 it mischaracterizes TDY's position in this matter.</p> <p>5 A. Yes, I am.</p> <p>6 BY MR. BARR:</p> <p>7 Q. In your opinion, based on your</p> <p>8 experience for 30-plus years, do you believe that</p> <p>9 claim is consistent or inconsistent with your</p> <p>10 knowledge and experience?</p> <p>11 MR. WINE: Calls for a legal</p> <p>12 conclusion, ultimate issue of fact and law for the</p> <p>13 Court to decide.</p> <p>14 A. Based upon my experience and training in</p> <p>15 government contracts, it is inconsistent with my</p> <p>16 understanding and knowledge of government</p> <p>17 contracts.</p> <p>18 BY MR. BARR:</p> <p>19 Q. Now, again, based on your training and</p> <p>20 experience, what is your understanding of the term</p> <p>21 "specifications" in the context of defense</p> <p>22 contracting?</p> <p style="text-align: right;">Page 348</p>
<p>1 get a better sense of the significance of the</p> <p>2 document, does this summarize TRA's views as to</p> <p>3 when title passed to the government on various</p> <p>4 aspects of inventory?</p> <p>5 MR. WINE: Objection. The witness</p> <p>6 is not qualified to testify regarding TRA's views</p> <p>7 on anything, nor is a summary appropriate. If</p> <p>8 Counsel wishes to ask him questions about a</p> <p>9 document, the document speaks for itself, and he</p> <p>10 can read it.</p> <p>11 But to summarize a document for</p> <p>12 which he was not an author and his only</p> <p>13 qualification is that he has read the document does</p> <p>14 not allow him to testify on it. It would be</p> <p>15 inadmissible hearsay and, therefore, not admissible</p> <p>16 through his testimony at this time.</p> <p>17 A. Yes, it does.</p> <p>18 BY MR. BARR:</p> <p>19 Q. All right. Thank you, Mr. Jordan.</p> <p>20 Okay. Let's change subjects. I'd like to talk now</p> <p>21 about military contract specifications.</p> <p>22 Are you aware of TDY's argument in this</p> <p style="text-align: right;">Page 347</p>	<p>1 A. Specification is used to define the</p> <p>2 technical -- technological base, if you will, for</p> <p>3 the product being produced. It establishes the</p> <p>4 framework to control the contractor's technical</p> <p>5 production of the contract.</p> <p>6 It does not in any way, shape, form, or</p> <p>7 fashion tell a contractor how to manage his</p> <p>8 workforce or how to manage his company, but it does</p> <p>9 establish a basis for which the contractor and the</p> <p>10 government can understand the duties and</p> <p>11 responsibilities of a contractor from a technical</p> <p>12 standpoint.</p> <p>13 Q. Now, is the understanding -- based on</p> <p>14 documents that you have seen and your training when</p> <p>15 you first came to the Air Force, was the basic</p> <p>16 nature of specifications any different during the</p> <p>17 World War II period?</p> <p>18 MR. WINE: Objection. The witness</p> <p>19 lacks expertise in the area in the sense -- to the</p> <p>20 extent that he began his tenure as a federal</p> <p>21 employee roughly a decade after the end of World</p> <p>22 War II.</p> <p style="text-align: right;">Page 349</p>

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<p>1 A. Based upon the documents that I have</p> <p>2 read, the scope and intent of specifications during</p> <p>3 World War II was the same as it was during --</p> <p>4 throughout my entire career in the federal</p> <p>5 government.</p> <p>6 BY MR. BARR:</p> <p>7 Q. Now, when you came to the Air Force</p> <p>8 through your basic training course and the</p> <p>9 instructions of the more experienced contracting</p> <p>10 officers in the Air Force, did you have reference</p> <p>11 in that training to materials that predated your</p> <p>12 arrival?</p> <p>13 A. Yes, I did. And the contracting</p> <p>14 officers under whom -- tutelage I worked when I was</p> <p>15 a trainee, to the best of my knowledge, they were</p> <p>16 employees of the federal government and in the</p> <p>17 contracting process during and subsequent to World</p> <p>18 War II.</p> <p>19 Q. Now, if you could, explain for the Court</p> <p>20 why and how the government uses specifications in</p> <p>21 defense contracting.</p> <p>22 MR. WINE: Objection to the extent</p> <p style="text-align: right;">Page 350</p>	<p>1 A. Because the specifications are never</p> <p>2 written for one specific contractor or one specific</p> <p>3 product, yes, they are applicable nationwide to all</p> <p>4 contractors being -- or under contract to produce</p> <p>5 products. And to the best of my knowledge, most</p> <p>6 specifications used by the military are predicated</p> <p>7 upon best industry standards, and they do have a</p> <p>8 commercial counterpart.</p> <p>9 Q. Now, in addition to your training and</p> <p>10 experience in the course of your career as a</p> <p>11 government contracting officer, have you reviewed</p> <p>12 documents in the course of this litigation which</p> <p>13 further support your views?</p> <p>14 A. Yes, I have.</p> <p>15 (Exhibit Nos. 204 through 206</p> <p>16 marked)</p> <p>17 MR. WINE: While the witness is</p> <p>18 reviewing the document, we'll object on the basis</p> <p>19 of foundation. We'll also object to these</p> <p>20 documents and assert the same line of objections</p> <p>21 that we have asserted to the government's attempt</p> <p>22 to admit excerpts of ASPRs over the last -- over</p> <p style="text-align: right;">Page 352</p>
<p>1 it calls for a legal conclusion.</p> <p>2 A. As I indicated both Wednesday and few</p> <p>3 minutes ago, it used specifications to establish</p> <p>4 the technical parameters of the product being</p> <p>5 produced. It established the requirements from a</p> <p>6 technical standpoint based upon form, fit,</p> <p>7 function, and performance of the product being</p> <p>8 produced by the contractor and its capabilities of</p> <p>9 meeting the stated military purpose of the</p> <p>10 contract.</p> <p>11 BY MR. BARR:</p> <p>12 Q. Now, what, if any, role does</p> <p>13 standardization play in the use of specifications?</p> <p>14 A. It plays a very significant role because</p> <p>15 a lot of the products are used in relation to other</p> <p>16 products in the military inventory. And absent</p> <p>17 standardization, you would not have what they call</p> <p>18 interoperability of products. One product would</p> <p>19 not be capable of being used with other products in</p> <p>20 the Air Force -- or the military inventory.</p> <p>21 Q. And this concept of standardization,</p> <p>22 does it apply across different contractors as well?</p> <p style="text-align: right;">Page 351</p>	<p>1 the course of the last three days.</p> <p>2 BY MR. BARR:</p> <p>3 Q. Mr. Jordan, have you finished reviewing</p> <p>4 these documents?</p> <p>5 A. Yes, I have.</p> <p>6 Q. Looking at them as a group and directing</p> <p>7 your attention in particular to Exhibit 206, the</p> <p>8 fabrication manual.</p> <p>9 A. Okay.</p> <p>10 Q. You see I've tabbed a page. I believe</p> <p>11 it's 298.</p> <p>12 Do you see the definition in that</p> <p>13 document pertaining to specifications?</p> <p>14 MR. WINE: 298 of that document is</p> <p>15 Chapter 1, "Engineering Drawings, Specifications,</p> <p>16 and Planning."</p> <p>17 A. I think it's 299.</p> <p>18 BY MR. BARR:</p> <p>19 Q. Try 299.</p> <p>20 MR. WINE: We'll object to the use</p> <p>21 of this document as hearsay to the extent that it</p> <p>22 is a corporate document of Teledyne Ryan</p> <p style="text-align: right;">Page 353</p>

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<p>1 Aeronautical of which the witness does not have</p> <p>2 authorship or receiver status and, therefore, the</p> <p>3 document constitutes hearsay.</p> <p>4 BY MR. BARR:</p> <p>5 Q. If you would -- in your opinion based on</p> <p>6 your knowledge and training in government</p> <p>7 contracting and experience, is the TRA definition</p> <p>8 of specifications comparable in substance to the</p> <p>9 definition in the other documents that I've given</p> <p>10 you?</p> <p>11 A. Yes, it is.</p> <p>12 Q. And, for the record, if you'd look at</p> <p>13 Page 302, it's a sample form used by TRA. Do you</p> <p>14 see a date on that document?</p> <p>15 MR. WINE: Object -- objection to</p> <p>16 the extent it mischaracterizes the document and</p> <p>17 assumes facts not in evidence.</p> <p>18 A. Yes, I do.</p> <p>19 BY MR. BARR:</p> <p>20 Q. And what is that date?</p> <p>21 A. 5/19/90.</p> <p>22 Q. Okay. Now, with respect to</p> <p style="text-align: right;">Page 354</p>	<p>1 contractors and the using commands?</p> <p>2 MR. WINE: Objection, assumes facts</p> <p>3 not in evidence. The witness has never testified</p> <p>4 that he was involved in the development of mil</p> <p>5 specs and, therefore, the testimony sought exceeds</p> <p>6 his area of expertise.</p> <p>7 A. The purpose was to solicit comments from</p> <p>8 those activities that used those specifications in</p> <p>9 an effort to assure the continual improvement of</p> <p>10 the specifications and to eliminate any</p> <p>11 inconsistencies or ambiguities that were</p> <p>12 incorporated into earlier editions of the</p> <p>13 specifications.</p> <p>14 BY MR. BARR:</p> <p>15 Q. And how did you come by this knowledge?</p> <p>16 A. There is a form that we appended to</p> <p>17 every solicitation that could be used by the users</p> <p>18 to submit their comments to the agency that was</p> <p>19 responsible for preparation of that particular</p> <p>20 specification.</p> <p>21 Q. And you did that in the course of your</p> <p>22 work as a government contracting officer?</p> <p style="text-align: right;">Page 356</p>
<p>1 specifications in general -- and we're going to</p> <p>2 mark a number of specifications in a moment that</p> <p>3 are pertinent in this case. But we talked about</p> <p>4 standardization a moment ago in the context of</p> <p>5 government -- of military specifications.</p> <p>6 In the course of your experience, has</p> <p>7 the military in developing and revising its</p> <p>8 specifications sought input from users of those</p> <p>9 specifications?</p> <p>10 A. Yes, they have.</p> <p>11 Q. And when we say "users of those</p> <p>12 specifications," what -- who comes to mind when we</p> <p>13 use that phrase, "users of the specifications"?</p> <p>14 MR. WINE: Objection, leading.</p> <p>15 A. The government solicited input from</p> <p>16 contractors who used those specifications as well</p> <p>17 as from the using commands that employed those</p> <p>18 products produced as the specifications in the</p> <p>19 field.</p> <p>20 BY MR. BARR:</p> <p>21 Q. And what was the objective, based on</p> <p>22 your experience, in seeking input from the defense</p> <p style="text-align: right;">Page 355</p>	<p>1 A. Yes, I did.</p> <p>2 MR. BARR: Is there a technical</p> <p>3 problem?</p> <p>4 MR. WINE: Yeah. Our last entry is</p> <p>5 10:27:04.</p> <p>6 MR. BARR: Do we need to take a</p> <p>7 break?</p> <p>8 THE VIDEOGRAPHER: Going off record.</p> <p>9 The time now is 10:28.</p> <p>10 (Recess: 10:28 a.m. to 10:31 a.m.)</p> <p>11 THE VIDEOGRAPHER: We're going back</p> <p>12 on record. The time now is 10:31.</p> <p>13 BY MR. BARR:</p> <p>14 Q. Now, with respect further to the use of</p> <p>15 specifications in the course of your early training</p> <p>16 when you came to the Air Force, did you learn about</p> <p>17 an early use of specifications in aviation?</p> <p>18 MR. WINE: Objection.</p> <p>19 A. Yes, I did.</p> <p>20 BY MR. BARR:</p> <p>21 Q. What was that example that you learned</p> <p>22 about?</p> <p style="text-align: right;">Page 357</p>

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<p>1 A. The earliest example that I was aware of</p> <p>2 was the contract for procurement of the first</p> <p>3 heavier-than-air machine from the Wright brothers.</p> <p>4 Q. And is that that 1908 contract that we</p> <p>5 referred to earlier in this depo testimony?</p> <p>6 A. Yes, it is.</p> <p>7 Q. And you became aware of that during your</p> <p>8 training course?</p> <p>9 A. Yes, I did.</p> <p>10 Q. Did your training course trace the use</p> <p>11 of specifications in the -- generally during the</p> <p>12 time period between 1908 and the time you came to</p> <p>13 the Air Force?</p> <p>14 A. To the best of my recollection, yes, it</p> <p>15 did.</p> <p>16 THE WITNESS: Pardon me. I think</p> <p>17 you gave them the wrong copy.</p> <p>18 MR. BARR: Oh, I beg your pardon.</p> <p>19 MR. MATEER: Sorry. I'm fast.</p> <p>20 MR. BARR: You can just put the</p> <p>21 sticker over that. Do we have another one?</p> <p>22 MR. WINE: Why don't you just take</p> <p style="text-align: right;">Page 358</p>	<p>1 control, or use of chemicals in the Ryan or TRA</p> <p>2 processes?</p> <p>3 MR. WINE: Objection, documents</p> <p>4 speak for themselves and calls for a legal</p> <p>5 conclusion.</p> <p>6 A. No, they do not.</p> <p>7 BY MR. BARR:</p> <p>8 Q. Do any of these military specifications</p> <p>9 refer to any government responsibilities relating</p> <p>10 to the disposal of chemical waste from those</p> <p>11 processes?</p> <p>12 MR. WINE: Same objection.</p> <p>13 A. No, they do not.</p> <p>14 BY MR. BARR:</p> <p>15 Q. Do any of these military specifications</p> <p>16 refer to any government responsibilities to</p> <p>17 supervise or direct Ryan or TRA personnel who did</p> <p>18 perform the actions that we have just talked about</p> <p>19 in the last two questions?</p> <p>20 MR. WINE: Same objections.</p> <p>21 A. No, they do not.</p> <p>22</p> <p style="text-align: right;">Page 360</p>
<p>1 the tab off?</p> <p>2 MR. BARR: Good idea. Even better.</p> <p>3 (Exhibit Nos. 207 through 217</p> <p>4 marked)</p> <p>5 MR. WINE: For the purposes of the</p> <p>6 record, while --</p> <p>7 MR. BARR: Go ahead.</p> <p>8 MR. WINE: -- while the witness is</p> <p>9 reviewing the documents, TDY will assert the same</p> <p>10 objections with respect to Exhibits 207 through</p> <p>11 26 -- no, I'm sorry -- 217 that it has asserted</p> <p>12 with respect to excerpts of ASPRs.</p> <p>13 BY MR. BARR:</p> <p>14 Q. Mr. Jordan, if you would, look briefly</p> <p>15 through those exhibits, and I'll ask you if you</p> <p>16 have reviewed them in the context of your expert</p> <p>17 work in this case.</p> <p>18 A. Yes, I have previously reviewed these</p> <p>19 documents.</p> <p>20 Q. Now, considering these as a group, do</p> <p>21 any of these military specifications refer to any</p> <p>22 government responsibilities for the handling,</p> <p style="text-align: right;">Page 359</p>	<p>1 BY MR. BARR:</p> <p>2 Q. Have you encountered any other military</p> <p>3 specifications in the record in this case which do</p> <p>4 include any of these -- any such government</p> <p>5 responsibilities?</p> <p>6 MR. WINE: Same objection.</p> <p>7 A. I have not.</p> <p>8 BY MR. BARR:</p> <p>9 Q. And, likewise, have you encountered any</p> <p>10 military specifications or manuals of any kind that</p> <p>11 directed or provided instructions for Ryan's or</p> <p>12 TRA's handling of any PCB containing fluids</p> <p>13 discharged from any machinery or equipment at the</p> <p>14 Harbor Drive plant --</p> <p>15 MR. WINE: Same --</p> <p>16 BY MR. BARR:</p> <p>17 Q. -- during or after World War II?</p> <p>18 MR. WINE: Same objections.</p> <p>19 A. No, I have not.</p> <p>20 MR. WINE: I also just want to note</p> <p>21 for the record that the mil specs represented at</p> <p>22 207 through 217 deal exclusively with chemical</p> <p style="text-align: right;">Page 361</p>

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<p>1 conversion coatings on -- hold on one second.</p> <p>2 MR. BARR: No, they don't.</p> <p>3 MR. WINE: Let me make sure --</p> <p>4 surface treatments in metallic coatings for</p> <p>5 metallic surfaces or weapon systems. Therefore, to</p> <p>6 the extent that representations are being made with</p> <p>7 respect to all mil specs in general in this matter</p> <p>8 through the use of a subset of mil specs, we object</p> <p>9 on that basis.</p> <p>10 BY MR. BARR:</p> <p>11 Q. Mr. Jordan, with respect -- harkening</p> <p>12 back now to MPDs. Do you recall we discussed MPDs</p> <p>13 to some extent yesterday?</p> <p>14 A. Yes, I recall.</p> <p>15 Q. Let me show you what was marked as</p> <p>16 Exhibit 136. I'll direct your attention to page --</p> <p>17 with the -- ending with the Bates number 597 and</p> <p>18 the paragraph which appears to be 4.5-1 relating to</p> <p>19 equipment control.</p> <p>20 A. Okay.</p> <p>21 MR. WINE: Again, for the record, we</p> <p>22 assert the same objections with respect to the</p> <p style="text-align: right;">Page 362</p>	<p>1 MR. WINE: Same objections to the</p> <p>2 response.</p> <p>3 BY MR. BARR:</p> <p>4 Q. Mr. Jordan, I'll take that exhibit back</p> <p>5 from you, if you don't mind.</p> <p>6 MR. WINE: Also, for purposes of the</p> <p>7 record, to the extent that the document and the</p> <p>8 witness' testimony related thereto exceeds the</p> <p>9 scope of the witness' expert report, it is</p> <p>10 inadmissible as such.</p> <p>11 BY MR. BARR:</p> <p>12 Q. Let's change topics, Mr. Jordan. Let's</p> <p>13 talk about company obligations regarding government</p> <p>14 owned equipment.</p> <p>15 A. Okay.</p> <p>16 Q. We've touched on that subject from time</p> <p>17 to time in the course of the last two days of your</p> <p>18 testimony, but I'd like to explore that a little</p> <p>19 further with you.</p> <p>20 Did you determine in your review of</p> <p>21 documents and testimony in this case whether Ryan</p> <p>22 was solely responsible for repair and maintenance</p> <p style="text-align: right;">Page 364</p>
<p>1 introduction of this document. The document is a</p> <p>2 TRA document. So there's a lack of foundation to</p> <p>3 introduce this document via this witness. Also --</p> <p>4 go ahead. We'll assert further objections later.</p> <p>5 BY MR. BARR:</p> <p>6 Q. Mr. Jordan, have you -- have you seen</p> <p>7 provisions similar to the one to which I've</p> <p>8 directed your attention in other MPDs of this</p> <p>9 company?</p> <p>10 MR. WINE: Same objections.</p> <p>11 A. Yes, I have.</p> <p>12 BY MR. BARR:</p> <p>13 Q. And could you direct the Court's</p> <p>14 attention to the language which pertains to who is</p> <p>15 responsible for the operation of process equipment?</p> <p>16 MR. WINE: Objection to the extent</p> <p>17 it attempts to characterize the document outside of</p> <p>18 its context, lack of foundation, the document</p> <p>19 speaks for itself.</p> <p>20 A. It is the contractor's department that</p> <p>21 is operating the equipment -- or the processes</p> <p>22 responsible for the equipment.</p> <p style="text-align: right;">Page 363</p>	<p>1 of government owned machine tools and equipment in</p> <p>2 their possession during World War II?</p> <p>3 MR. WINE: Objection, calls for a</p> <p>4 legal conclusion.</p> <p>5 A. Yes, I did.</p> <p>6 BY MR. BARR:</p> <p>7 Q. And do you recall a particular document</p> <p>8 which -- on which you drew in reaching that</p> <p>9 conclusion?</p> <p>10 A. Yes, I did.</p> <p>11 Q. Let me show you what we'll have marked</p> <p>12 as the exhibit next in order, a May 12, 1942</p> <p>13 agreement of lease between the Defense Plant</p> <p>14 Corporation and the Ryan Aeronautical Company.</p> <p>15 (Exhibit No. 218 marked)</p> <p>16 MR. WINE: Again, we'll object on</p> <p>17 the basis of lack of foundation and to the extent</p> <p>18 it's interpreting a legal document calling for a</p> <p>19 legal conclusion.</p> <p>20 BY MR. BARR:</p> <p>21 Q. Mr. Jordan, I'll direct your attention</p> <p>22 to the page with the Bates number ending in 54,</p> <p style="text-align: right;">Page 365</p>

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<p>1 Paragraph 15.</p> <p>2 A. Okay.</p> <p>3 Q. Is this the provision that you had in</p> <p>4 mind regarding the nature and extent of Ryan's</p> <p>5 responsibilities?</p> <p>6 MR. WINE: Objection, leading.</p> <p>7 A. Yes, it is.</p> <p>8 MR. WINE: Again, the document</p> <p>9 speaks for itself as well.</p> <p>10 BY MR. BARR:</p> <p>11 Q. Is this -- is part -- the provision that</p> <p>12 we've discussed here, is that essentially the same,</p> <p>13 in sum and substance, as provisions that you</p> <p>14 encountered relating to contractor obligations for</p> <p>15 government facilities in the post-war period?</p> <p>16 MR. WINE: Objection.</p> <p>17 A. Yes, it is.</p> <p>18 BY MR. BARR:</p> <p>19 Q. And does that include the facilities</p> <p>20 contract -- the 1967 facilities contract that we</p> <p>21 looked at the other day?</p> <p>22 MR. WINE: Same objection, assumes</p> <p style="text-align: right;">Page 366</p>	<p>1 on 141 and 143; on 29, they appear on Pages 194,</p> <p>2 195, and 197; and on Exhibit 30, they appear on</p> <p>3 Pages 256, 257, and 259.</p> <p>4 MR. WINE: TDY reasserts the same</p> <p>5 objections raised when these documents were</p> <p>6 introduced on day one and also objects on the basis</p> <p>7 of leading with respect to the specific references</p> <p>8 to particular page numbers.</p> <p>9 MR. BARR: We can go off the record.</p> <p>10 THE VIDEOGRAPHER: Going off record.</p> <p>11 The time now is 10:52.</p> <p>12 (Recess 10:52 a.m. to 10:55 a.m.)</p> <p>13 THE VIDEOGRAPHER: Going back on</p> <p>14 record. The time now is 10:55.</p> <p>15 BY MR. BARR:</p> <p>16 Q. Mr. Jordan, you've had a chance to</p> <p>17 review the portions that I mentioned in Exhibits 26</p> <p>18 through 30. Can you summarize the topics that</p> <p>19 those portions relate to?</p> <p>20 MR. WINE: Objection, the documents</p> <p>21 speak for themselves.</p> <p>22 A. The first portion pertains to the</p> <p style="text-align: right;">Page 368</p>
<p>1 facts not in evidence.</p> <p>2 A. Yes, it is.</p> <p>3 MR. WINE: Also, to the extent that</p> <p>4 the referenced provision is being introduced or</p> <p>5 offered for dealing with repair and maintenance,</p> <p>6 the clause is silent on such.</p> <p>7 BY MR. BARR:</p> <p>8 Q. Now, do you recall, Mr. Jordan, that we</p> <p>9 looked at a number of ASPR provisions pertaining to</p> <p>10 cost reimbursement contracts and -- do you recall</p> <p>11 that, Mr. Jordan?</p> <p>12 MR. WINE: Objection, assumes facts</p> <p>13 not in evidence, vague and ambiguous.</p> <p>14 A. Yes, I do.</p> <p>15 BY MR. BARR:</p> <p>16 Q. Let me show you what were previously</p> <p>17 marked as Exhibits 26, 27, 28, 29, and 30, and I'll</p> <p>18 direct your attention to the pages on which I've</p> <p>19 placed tape flags.</p> <p>20 MR. BARR: For the record, in 26,</p> <p>21 these appear on Pages 87, 88, and 90; on 27, they</p> <p>22 appear on 112 and 114; on 28, the tape flags appear</p> <p style="text-align: right;">Page 367</p>	<p>1 contract responsibility for maintaining the</p> <p>2 facilities provided to it as far as sound and</p> <p>3 industrial practices. It is consistent throughout</p> <p>4 the entire period.</p> <p>5 The second provision that was marked</p> <p>6 refers to a requirement placed upon the contractor</p> <p>7 for preparation of an inventory of all government</p> <p>8 property provided to it that was not consumed in</p> <p>9 the production of the end product.</p> <p>10 BY MR. BARR:</p> <p>11 Q. And are there also title provisions</p> <p>12 tabbed in the documents that I handed you?</p> <p>13 A. Yes, there --</p> <p>14 MR. WINE: Objection, leading.</p> <p>15 A. Yes, there are.</p> <p>16 BY MR. BARR:</p> <p>17 Q. And is the -- are those provisions</p> <p>18 consistent over time as well?</p> <p>19 A. Yes, they are.</p> <p>20 Q. All right. May I have those back,</p> <p>21 please? Thank you.</p> <p>22 All right. I'd like to mark additional</p> <p style="text-align: right;">Page 369</p>

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<p>1 exhibits on the subject of these cost reimbursement</p> <p>2 provisions in the ASPRs over time. And I will have</p> <p>3 these marked and then ask you some questions about</p> <p>4 them.</p> <p>5 (Exhibit Nos. 219 through 222</p> <p>6 marked)</p> <p>7 BY MR. BARR:</p> <p>8 Q. Mr. Jordan, just for the record, on</p> <p>9 Exhibit 219, I put tape flags on Pages 157, 158; on</p> <p>10 Exhibit 220, on Pages 163, 165, and 166; on 221, on</p> <p>11 Pages 169, 170, and 172; on Exhibit 222, on</p> <p>12 Pages 174, 175, and 177.</p> <p>13 MR. WINE: While the witness is</p> <p>14 reviewing the documents, TDY asserts the same</p> <p>15 objections that it's asserted throughout this</p> <p>16 deposition regarding the introduction of excerpts</p> <p>17 of ASPRs for disparate periods of time.</p> <p>18 MR. BARR: We can go off the record.</p> <p>19 THE VIDEOGRAPHER: Going off the</p> <p>20 record. The time now is 11:00 a.m.</p> <p>21 (Recess: 11:00 a.m. to 11:02 a.m.)</p> <p>22 THE VIDEOGRAPHER: Going back on the</p> <p style="text-align: right;">Page 370</p>	<p>1 MR. WINE: Objection, leading.</p> <p>2 BY MR. BARR:</p> <p>3 Q. Were you familiar with these provisions</p> <p>4 during the course of your government contracting</p> <p>5 career?</p> <p>6 A. Yes, I was.</p> <p>7 Q. And in your opinion, are these the same</p> <p>8 or similar in substance to the earlier provisions</p> <p>9 relating to cost reimbursement contracts that we</p> <p>10 looked at here?</p> <p>11 MR. WINE: Objection, calls for a</p> <p>12 legal conclusion, lacks foundation, exceeds the</p> <p>13 area of expertise of the witness, and exceeds his</p> <p>14 expert report.</p> <p>15 A. In my opinion they are consistent.</p> <p>16 MR. WINE: Also assumes facts not in</p> <p>17 evidence.</p> <p>18 BY MR. BARR:</p> <p>19 Q. Now, in terms of your experience in the</p> <p>20 context of government contracting, your training,</p> <p>21 your experience, who was responsible for inspecting</p> <p>22 government owned machinery and equipment in the</p> <p style="text-align: right;">Page 372</p>
<p>1 record. The time now is 11:02.</p> <p>2 BY MR. BARR:</p> <p>3 Q. Mr. Jordan, have you had a chance to</p> <p>4 review what we've marked as -- I believe this is --</p> <p>5 MR. WINE: 219 to 222.</p> <p>6 BY MR. BARR:</p> <p>7 Q. -- 219 to 222.</p> <p>8 MR. BARR: Thank you.</p> <p>9 A. Yes. Yes, I have.</p> <p>10 BY MR. BARR:</p> <p>11 Q. Do these also relate -- as far as what I</p> <p>12 have directed your attention to, do these also</p> <p>13 relate to cost reimbursement contracts?</p> <p>14 MR. WINE: Objection, leading.</p> <p>15 A. Yes, they do.</p> <p>16 BY MR. BARR:</p> <p>17 Q. Do these also relate -- the portions to</p> <p>18 which I have directed your attention relate to</p> <p>19 title, contractor obligations regarding government</p> <p>20 property, and the handling of government property</p> <p>21 upon contract completion?</p> <p>22 A. Yes, they do.</p> <p style="text-align: right;">Page 371</p>	<p>1 hands of a contractor to determine whether the</p> <p>2 contractor was maintaining that machinery and</p> <p>3 equipment properly?</p> <p>4 MR. WINE: Assumes facts not in</p> <p>5 evidence.</p> <p>6 A. It was the responsibility of the</p> <p>7 contractor to do that inspection.</p> <p>8 BY MR. BARR:</p> <p>9 Q. And during your time as a government</p> <p>10 contracting officer, did the government have a</p> <p>11 policy as to the maintenance of contractor property</p> <p>12 control records?</p> <p>13 A. Yes, they did.</p> <p>14 Q. And what was that policy?</p> <p>15 A. The official contract records would be</p> <p>16 considered to be the contractor-maintained records.</p> <p>17 The government did not maintain a separate set of</p> <p>18 records or books, if you will, of property</p> <p>19 furnished to the contractors -- government</p> <p>20 furnished property. We relied upon the</p> <p>21 contractors' records as the official contract</p> <p>22 records.</p> <p style="text-align: right;">Page 373</p>

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<p>1 MR. BARR: All right. I think this</p> <p>2 would be a good time for us to take our first</p> <p>3 break.</p> <p>4 THE VIDEOGRAPHER: Going off the</p> <p>5 record. The time now is 11:06.</p> <p>6 (Recess: 11:06 a.m. to 11:20 a.m.)</p> <p>7 THE VIDEOGRAPHER: Going back on the</p> <p>8 record. The time now is 11:20.</p> <p>9 BY MR. BARR:</p> <p>10 Q. Mr. Jordan, before we broke, we were</p> <p>11 talking about contractor obligations pertaining to</p> <p>12 government property. Do you recall that?</p> <p>13 A. Yes, I do.</p> <p>14 Q. Let me have you review the next exhibit.</p> <p>15 Again, this is an excerpt from the 1976 ASPRs.</p> <p>16 (Exhibit No. 223 marked)</p> <p>17 MR. WINE: What page is Counsel</p> <p>18 designating?</p> <p>19 BY MR. BARR:</p> <p>20 Q. Mr. Jordan, I have put a tape flag on</p> <p>21 the page ending with the Bates number 60. I'm</p> <p>22 directing your attention to Paragraph 7-702.6.</p> <p style="text-align: right;">Page 374</p>	<p>1 not in evidence and misinterprets the document --</p> <p>2 mischaracterizes the document.</p> <p>3 A. It speaks specifically to facilities,</p> <p>4 not all government property.</p> <p>5 BY MR. BARR:</p> <p>6 Q. Okay. And is this consistent with your</p> <p>7 understanding as to contractor obligations for</p> <p>8 inspection of government facilities and the</p> <p>9 government's actions on this subject?</p> <p>10 A. Yes --</p> <p>11 MR. WINE: Objection. It</p> <p>12 mischaracterizes the document.</p> <p>13 A. Yes, it does.</p> <p>14 MR. WINE: Assumes facts not in</p> <p>15 evidence.</p> <p>16 MR. BARR: Off the record for one</p> <p>17 moment, please.</p> <p>18 THE VIDEOGRAPHER: Going off the</p> <p>19 record. The time is 11:24.</p> <p>20 (Recess 11:24 a.m. to 11:24 a.m.)</p> <p>21 THE VIDEOGRAPHER: Going back on the</p> <p>22 record. The time now is 11:24.</p> <p style="text-align: right;">Page 376</p>
<p>1 MR. WINE: TDY asserts the same</p> <p>2 objection with respect to this ASPR excerpt.</p> <p>3 A. Okay.</p> <p>4 BY MR. BARR:</p> <p>5 Q. Now, do you see the parenthetical next</p> <p>6 to the title word "Inspection"? It says, "1964</p> <p>7 SEP"?</p> <p>8 A. Yes, I do.</p> <p>9 Q. Again, what does that refer to?</p> <p>10 A. That is the date of the Armed Services</p> <p>11 Procurement Regulation from which this particular</p> <p>12 clause came from.</p> <p>13 Q. Does that indicate that it was the same</p> <p>14 provision that existed between September 1964 and</p> <p>15 this 1976 version?</p> <p>16 A. Yes, it does.</p> <p>17 Q. And is this Provision 7-702.6, is that</p> <p>18 consistent with your understanding as to contractor</p> <p>19 obligations for inspection of government property</p> <p>20 and the government's obligations or</p> <p>21 responsibilities in this subject?</p> <p>22 MR. WINE: Objection, assumes facts</p> <p style="text-align: right;">Page 375</p>	<p>1 BY MR. BARR:</p> <p>2 Q. All right. Now, we've spoken about</p> <p>3 government inspection personnel and their</p> <p>4 responsibilities. Let's look at the other side of</p> <p>5 the coin and Ryan's and TRA's quality control</p> <p>6 department obligations.</p> <p>7 Based on your experience and training</p> <p>8 during the time you were a government contracting</p> <p>9 officer, who, as between the government and the</p> <p>10 contractor, had responsibility for proper</p> <p>11 inspection of their products and processes?</p> <p>12 MR. WINE: Objection, vague and</p> <p>13 ambiguous with respect to the use of the word -- or</p> <p>14 term "proper inspection," calls for a legal</p> <p>15 conclusion.</p> <p>16 A. It was the responsibility of the</p> <p>17 contractor to maintain an inspection system and to</p> <p>18 maintain documentation of the inspections conducted</p> <p>19 by the contractor.</p> <p>20 BY MR. BARR:</p> <p>21 Q. And did you encounter documents in this</p> <p>22 case, some of which we've marked already -- did you</p> <p style="text-align: right;">Page 377</p>

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<p>1 encounter documents in this case that indicated</p> <p>2 that Ryan and TRA complied with those obligations?</p> <p>3 MR. WINE: Objection, leading.</p> <p>4 A. Yes, I did.</p> <p>5 BY MR. BARR:</p> <p>6 Q. Do you recall the nature of those</p> <p>7 documents?</p> <p>8 A. There were some various reports that had</p> <p>9 been prepared concerning the contractor's</p> <p>10 operations, and they concluded that the contractor</p> <p>11 had conducted proper inspection.</p> <p>12 Q. Were these Air Force reports?</p> <p>13 A. To the best of my recollection, yes,</p> <p>14 they were.</p> <p>15 Q. Based on the Air Force reports that you</p> <p>16 recall reviewing, do you have a general sense as to</p> <p>17 how many Ryan inspection personnel were in its</p> <p>18 quality control division in -- in, we'll say, the</p> <p>19 1950s?</p> <p>20 MR. WINE: Objection, assumes facts</p> <p>21 not in evidence, calls for speculation.</p> <p>22 A. The reports that I've read indicated, to</p> <p style="text-align: right;">Page 378</p>	<p>1 BY MR. BARR:</p> <p>2 Q. These pages relate to the</p> <p>3 responsibilities of the company's director of</p> <p>4 quality control, do they not?</p> <p>5 MR. WINE: Objection, the document</p> <p>6 speaks for itself, assumes facts not in evidence.</p> <p>7 A. Yes, they do.</p> <p>8 BY MR. BARR:</p> <p>9 Q. Is the description of the company's</p> <p>10 director of quality control consistent with your</p> <p>11 experience in the course of your government</p> <p>12 contracting career?</p> <p>13 MR. WINE: Same objections.</p> <p>14 A. Yes, it is.</p> <p>15 BY MR. BARR:</p> <p>16 Q. Where it refers to the director of</p> <p>17 quality control being responsible to the president</p> <p>18 of the company, were you familiar with that type of</p> <p>19 reporting organization?</p> <p>20 MR. WINE: Same objections.</p> <p>21 A. Yes, I was.</p> <p>22</p> <p style="text-align: right;">Page 380</p>
<p>1 the best of my recollection, that the number of</p> <p>2 Ryan inspectors was somewhere between 250 and 600.</p> <p>3 MR. BARR: Let's go off the record,</p> <p>4 please.</p> <p>5 THE VIDEOGRAPHER: We're going off</p> <p>6 the record. The time now is 11:28.</p> <p>7 (Recess: 11:28 a.m. to 11:29 a.m.)</p> <p>8 THE VIDEOGRAPHER: Going back on</p> <p>9 record. The time now is 11:29.</p> <p>10 BY MR. BARR:</p> <p>11 Q. Mr. Jordan, I'm going to place in front</p> <p>12 of you what was previously marked in your testimony</p> <p>13 as Exhibit 125. This is the January -- excuse</p> <p>14 me -- June 1959 Ryan supervisory manual with a</p> <p>15 forward by T. Claude Ryan. And I'm going to direct</p> <p>16 your attention with a tape flag to Pages 2402 to</p> <p>17 2403.</p> <p>18 MR. WINE: While the witness is</p> <p>19 reviewing the document, we'll assert the same</p> <p>20 objections that we asserted when the government</p> <p>21 sought to initially mark Jordan Exhibit 125.</p> <p>22 A. Okay.</p> <p style="text-align: right;">Page 379</p>	<p>1 BY MR. BARR:</p> <p>2 Q. And were you familiar with another type</p> <p>3 of reporting structure for the head of quality</p> <p>4 control in contractors?</p> <p>5 MR. WINE: Objection, relevance.</p> <p>6 A. Yes, I was.</p> <p>7 BY MR. BARR:</p> <p>8 Q. What was that other kind of reporting</p> <p>9 structure that -- with which you became familiar?</p> <p>10 MR. WINE: Same objection.</p> <p>11 A. In some few companies, the director of</p> <p>12 quality control reported to the chief of</p> <p>13 production, and we objected to those kinds of</p> <p>14 organizational structures and found it to be a</p> <p>15 weakness in the company's organizational structure</p> <p>16 because that allowed the chief of production to put</p> <p>17 pressure upon the chief of quality to accept a</p> <p>18 product that was less than compliant with the terms</p> <p>19 and conditions of the contract in order to assure</p> <p>20 production on time.</p> <p>21 BY MR. BARR:</p> <p>22 Q. Did you take the kind of reporting</p> <p style="text-align: right;">Page 381</p>

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<p>1 structure for quality control into account in the</p> <p>2 award of contracts?</p> <p>3 A. That was one of the things that we</p> <p>4 considered, especially on competitive procurements.</p> <p>5 Prior to award of any contract, we had to make an</p> <p>6 affirmative determination responsibility, and if a</p> <p>7 contractor had an organizational structure, whether</p> <p>8 it was the chief of quality reported to the chief</p> <p>9 of production, we viewed that as a deficiency in</p> <p>10 the contractor's capability and it may have</p> <p>11 resulted in a determination of non-responsibility.</p> <p>12 Q. If you encountered a contractor which</p> <p>13 had a structure where the chief of quality reported</p> <p>14 to the chief of production, did you or any other</p> <p>15 contracting officer order or direct that company to</p> <p>16 change their management structure?</p> <p>17 A. We did not.</p> <p>18 Q. If you would, turn to the pages marked</p> <p>19 with the Bates numbers 2489 and then 2492.</p> <p>20 Do you see the references to various</p> <p>21 types of inspection services provided by the</p> <p>22 quality control division?</p> <p style="text-align: right;">Page 382</p>	<p>1 government.</p> <p>2 A. I'm familiar with both of these</p> <p>3 documents.</p> <p>4 BY MR. BARR:</p> <p>5 Q. In your opinion and based on your</p> <p>6 experience and training as a government contracting</p> <p>7 officer, are these consistent with your opinions or</p> <p>8 do these support your opinions concerning</p> <p>9 contractor responsibilities for quality control</p> <p>10 systems?</p> <p>11 MR. WINE: Same objections. It also</p> <p>12 calls for a legal conclusion.</p> <p>13 A. Yes, they do.</p> <p>14 BY MR. BARR:</p> <p>15 Q. May I have a look, please, at</p> <p>16 Exhibit 225? Thank you. Okay. Thank you.</p> <p>17 Now, I believe today we marked as</p> <p>18 exhibits a number of editions of MilS5002 as was</p> <p>19 revised over time. Do you recall that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Let me place those back in front of you.</p> <p>22 That's Exhibits 2007 (sic) through 211.</p> <p style="text-align: right;">Page 384</p>
<p>1 A. Yes, I do.</p> <p>2 Q. And again, was this type of -- set of</p> <p>3 responsibilities consistent with your experience in</p> <p>4 working with contractors during the course of your</p> <p>5 career?</p> <p>6 MR. WINE: Objection, assumes facts</p> <p>7 not in evidence, misinterprets the document.</p> <p>8 A. Yes, it was.</p> <p>9 BY MR. BARR:</p> <p>10 Q. I'd like to show you two additional</p> <p>11 military specifications. One is military</p> <p>12 specification MIL-Q-5923A, dated 14 September 1951,</p> <p>13 pertaining to quality control of aircraft and</p> <p>14 associated equipment.</p> <p>15 The second is MIL-Q-9858A dated</p> <p>16 16 December 1963, entitled, "Quality Program</p> <p>17 Requirements."</p> <p>18 (Exhibit Nos. 224 and 225 marked)</p> <p>19 MR. WINE: While the witness is</p> <p>20 reviewing the documents, TDY asserts the same</p> <p>21 objections to Exhibits 224 and 225 as it did to the</p> <p>22 prior mil specs sought to be introduced by the</p> <p style="text-align: right;">Page 383</p>	<p>1 Now, let me first ask you to look,</p> <p>2 please, at 207. If my notes are correct, that is</p> <p>3 the 1949 edition of MilS5002.</p> <p>4 A. That's correct.</p> <p>5 Q. If you would, look, please, at the page</p> <p>6 ending with Bates number 47. Do you see a</p> <p>7 provision there that pertains to inspection?</p> <p>8 A. Yes, I do.</p> <p>9 Q. Based on your knowledge and experience,</p> <p>10 does that provision impose any obligation on the</p> <p>11 government to inspect the work that the contractor</p> <p>12 is performing?</p> <p>13 MR. WINE: Objection, the document</p> <p>14 speaks for itself.</p> <p>15 A. It does not inspect an obligation -- it</p> <p>16 has the -- the government has a right to inspect,</p> <p>17 but not an obligation.</p> <p>18 MR. WINE: Objection,</p> <p>19 mischaracterizes the document. If the document is</p> <p>20 going to be characterized, it should be read</p> <p>21 verbatim. It's inconsistent with the witness'</p> <p>22 testimony.</p> <p style="text-align: right;">Page 385</p>

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<p>1 BY MR. BARR:</p> <p>2 Q. In your opinion and based on your</p> <p>3 experience and knowledge as a government</p> <p>4 contracting officer, does that provision -- what is</p> <p>5 the paragraph number of that provision so we have</p> <p>6 clarity?</p> <p>7 A. 4.1.</p> <p>8 Q. Does that Provision 4.1 relieve the</p> <p>9 contractor of any of its inspection or quality</p> <p>10 control obligations?</p> <p>11 MR. WINE: Objection, the document</p> <p>12 speaks for itself, calls for a legal conclusion.</p> <p>13 A. It does not.</p> <p>14 BY MR. BARR:</p> <p>15 Q. Now, if you could, look at the other</p> <p>16 exhibits. I believe they would be 208, 209, 210,</p> <p>17 and 211.</p> <p>18 Starting with 208, if you would look at</p> <p>19 the page ending with the Bates number 93, do you</p> <p>20 see a provision there pertaining to contractor</p> <p>21 obligations concerning quality assurance?</p> <p>22 A. Yes, I do.</p> <p style="text-align: right;">Page 386</p>	<p>1 BY MR. BARR:</p> <p>2 Q. Let's turn our attention to contractor</p> <p>3 responsibilities for plant security and classified</p> <p>4 information.</p> <p>5 Could you describe for the Court your</p> <p>6 experiences as a government contracting officer</p> <p>7 regarding contractor plant security and the</p> <p>8 handling of classified information?</p> <p>9 MR. WINE: During what period of</p> <p>10 time?</p> <p>11 MR. BARR: His entire period as a</p> <p>12 government contracting officer.</p> <p>13 MR. WINE: Objection, relevance.</p> <p>14 A. Based upon my experience and training as</p> <p>15 a contracting officer, the responsibility for</p> <p>16 securing classified material and information was</p> <p>17 the responsibility of the contractor.</p> <p>18 BY MR. BARR:</p> <p>19 Q. And what about industrial plant</p> <p>20 security, the physical security of the plant</p> <p>21 itself?</p> <p>22 MR. WINE: Same objections.</p> <p style="text-align: right;">Page 388</p>
<p>1 Q. And what is the sum and substance of</p> <p>2 that provision?</p> <p>3 MR. WINE: Objection, the document</p> <p>4 speaks for itself, calls for a legal conclusion.</p> <p>5 A. It specifically states the supplier is</p> <p>6 responsible for performance of all inspection</p> <p>7 requirements. It is more -- has more specificity</p> <p>8 than the 1949 edition of the same regulation. It</p> <p>9 is basically the same responsibilities.</p> <p>10 MR. WINE: Objection,</p> <p>11 mischaracterizes the document.</p> <p>12 BY MR. BARR:</p> <p>13 Q. And looking at Exhibit 209 with respect</p> <p>14 to 40 -- Page 407 -- maybe we can take these as a</p> <p>15 group -- and then Exhibit 210 at Pages 28 and 29,</p> <p>16 and then Exhibit 211 at Pages 60 and 61.</p> <p>17 Is the language and substance in those</p> <p>18 exhibits essentially the same on this point as was</p> <p>19 found in Exhibit 208?</p> <p>20 MR. WINE: Objection, the documents</p> <p>21 speak for themselves.</p> <p>22 A. Yes, it is.</p> <p style="text-align: right;">Page 387</p>	<p>1 A. Throughout my career, based upon my</p> <p>2 experience and personal observation of contractor</p> <p>3 facilities, the responsibility for plant security</p> <p>4 was that of the contractor.</p> <p>5 THE REPORTER: I'm sorry. What was</p> <p>6 the end?</p> <p>7 THE WITNESS: Was the responsibility</p> <p>8 of the contractor.</p> <p>9 THE REPORTER: Thank you.</p> <p>10 BY MR. BARR:</p> <p>11 Q. At contractor plants, did you ever</p> <p>12 encounter military guards stationed to provide</p> <p>13 physical plant security?</p> <p>14 A. I never encountered any military guards</p> <p>15 at contractor facilities.</p> <p>16 Q. Now, with respect to the kinds of</p> <p>17 classified information of which you became aware as</p> <p>18 a government contracting officer, were you ever</p> <p>19 aware of classified information that pertained to</p> <p>20 chemical waste disposal by a contractor?</p> <p>21 A. I never was aware of any classified</p> <p>22 information pertaining to any chemical waste.</p> <p style="text-align: right;">Page 389</p>

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<p>1 Q. Now, in terms of the -- of government --</p> <p>2 actions of the government personnel --</p> <p>3 A. Uh-huh.</p> <p>4 Q. -- with respect to physical plant</p> <p>5 security and safeguarding classified information in</p> <p>6 the hands of contractors, what role, if any, did</p> <p>7 the government personnel have?</p> <p>8 MR. WINE: The question requests</p> <p>9 generally or with respect to the Ryan site in</p> <p>10 particular?</p> <p>11 MR. BARR: We'll get to Ryan in</p> <p>12 particular.</p> <p>13 MR. WINE: Then objection on the</p> <p>14 basis of relevance.</p> <p>15 A. So based -- based upon my experience as</p> <p>16 a contracting officer, to every contract that</p> <p>17 required access to any classified information,</p> <p>18 there was a document entitled DD 254, which</p> <p>19 specifically identified the material that was</p> <p>20 considered to be classified and the level of</p> <p>21 classification of that material.</p> <p>22</p> <p style="text-align: right;">Page 390</p>	<p>1 BY MR. BARR:</p> <p>2 Q. And within your experience is -- "need</p> <p>3 to know," is that a term of art in the area of</p> <p>4 classified information?</p> <p>5 A. Yes, it is. A need to know, they had to</p> <p>6 have some purpose of having access to that</p> <p>7 classified information other than just mere</p> <p>8 curiosity.</p> <p>9 Q. Now, we've been talking in the context</p> <p>10 of your experience as a government contracting</p> <p>11 official in terms of physical plant security, in</p> <p>12 terms of safeguarding classified information, in</p> <p>13 terms of special clearances to a contractor's</p> <p>14 facility, and for security clearances for</p> <p>15 contractor personnel.</p> <p>16 Have you encountered any evidence with</p> <p>17 respect to Ryan or TRA that there were departures</p> <p>18 from the practices and procedures with which you</p> <p>19 were familiar during your career?</p> <p>20 MR. WINE: Objection, foundation.</p> <p>21 To the extent the United States hasn't established</p> <p>22 that this witness had a need to know any of that</p> <p style="text-align: right;">Page 392</p>
<p>1 BY MR. BARR:</p> <p>2 Q. Did government personnel review</p> <p>3 contractor procedures regarding -- to these</p> <p>4 matters?</p> <p>5 A. There was a requirement for the</p> <p>6 contractor to establish very strict, stringent</p> <p>7 provisions for classified -- for safeguarding</p> <p>8 classified information, and the government did</p> <p>9 review those contractor procedures.</p> <p>10 Q. Now, what was necessary in terms of the</p> <p>11 contractor's facility before classified information</p> <p>12 could be released to a contractor?</p> <p>13 MR. WINE: And objection, relevance.</p> <p>14 A. The contractor facility had to have a</p> <p>15 facility clearance for the level of classification.</p> <p>16 So if there was top secret material provided to the</p> <p>17 contractor, he had to have a top secret facility</p> <p>18 clearance.</p> <p>19 And then those individuals who had</p> <p>20 access to the classified information not only had</p> <p>21 to have an appropriate level of security clearance,</p> <p>22 but they had to have a demonstrated need to know.</p> <p style="text-align: right;">Page 391</p>	<p>1 information, he would lack a sufficient basis on</p> <p>2 which to testify in response to the United States'</p> <p>3 question. And it's also compound and also exceeds</p> <p>4 his area of expertise and his expert report.</p> <p>5 A. I have seen no such evidence.</p> <p>6 BY MR. BARR:</p> <p>7 Q. Now, whose responsibility was it within</p> <p>8 the scope of your experience and knowledge to</p> <p>9 obtain or to seek security clearances for</p> <p>10 contractor personnel?</p> <p>11 MR. WINE: Objection, assumes facts</p> <p>12 not in evidence, calls for a legal conclusion.</p> <p>13 A. It was the responsibility of the</p> <p>14 contractor.</p> <p>15 BY MR. BARR:</p> <p>16 Q. And again, have you encountered any</p> <p>17 evidence in this case which indicates that the</p> <p>18 practice at Ryan or TRA was any different?</p> <p>19 A. I have seen no such evidence.</p> <p>20 Q. Let's look at some additional exhibits.</p> <p>21 The first one is a January 25, 1939 letter from</p> <p>22 T. Claude Ryan to the Navy Department.</p> <p style="text-align: right;">Page 393</p>

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<p>1 (Exhibit No. 226 marked)</p> <p>2 MR. BARR: The second is a July 3,</p> <p>3 1940 FBI report pertaining to the Ryan Aeronautical</p> <p>4 Company.</p> <p>5 (Exhibit No. 227 marked)</p> <p>6 MR. BARR: The next, after a cover</p> <p>7 page, is a January 17, 1942 War Department</p> <p>8 memorandum.</p> <p>9 (Exhibit No. 228 marked)</p> <p>10 MR. BARR: The next document is a</p> <p>11 one-page organization chart dated 10/24/1944 for</p> <p>12 Ryan Aeronautical Company.</p> <p>13 (Exhibit No. 229 marked)</p> <p>14 MR. BARR: Next is a May 4, 1953</p> <p>15 Ryan Aeronautical Company letter.</p> <p>16 (Exhibit No. 230 marked)</p> <p>17 MR. BARR: The next document is a</p> <p>18 January 9, 1987, one-page weekly activity report.</p> <p>19 (Exhibit No. 231 marked)</p> <p>20 MR. BARR: And for the record,</p> <p>21 Mr. Jordan, I've placed a red tape flag next to the</p> <p>22 first bulleted paragraph on that document.</p> <p style="text-align: right;">Page 394</p>	<p>1 A. Okay.</p> <p>2 BY MR. BARR:</p> <p>3 Q. Mr. Jordan, now that you've had a chance</p> <p>4 to review these documents, are these documents that</p> <p>5 you considered in the course of your expert work in</p> <p>6 this case to date?</p> <p>7 A. Yes, they were.</p> <p>8 Q. Without getting into the details, do</p> <p>9 these, in your opinion, support your views as to</p> <p>10 contractor responsibilities for plant security and</p> <p>11 safeguarding of classified information?</p> <p>12 MR. WINE: Objection, assumes facts</p> <p>13 not in evidence. The documents are the best source</p> <p>14 of information and, therefore, summaries or broad</p> <p>15 testimony regarding general compliance with or</p> <p>16 consistency with the witness' opinion is</p> <p>17 inadmissible or inappropriate.</p> <p>18 Also, to the extent that ASPR</p> <p>19 provisions are included in the compilation, it</p> <p>20 calls for a legal conclusion.</p> <p>21 A. Yes, they do.</p> <p>22</p> <p style="text-align: right;">Page 396</p>
<p>1 MR. WINE: Which document?</p> <p>2 MR. BARR: Exhibit 231.</p> <p>3 And the last document in this series</p> <p>4 is a -- an excerpt from the 1963 ASPR, and I have</p> <p>5 placed a tape flag pertaining to 7 --</p> <p>6 Paragraph 7-104.12, Military Security Requirements.</p> <p>7 I put a tape flag on the contract clause itself.</p> <p>8 (Exhibit No. 232 marked)</p> <p>9 MR. WINE: While the witness is</p> <p>10 reviewing the compilation of documents, TDY would</p> <p>11 object on the basis of foundation for a number of</p> <p>12 the documents, particularly those authored by TDY.</p> <p>13 We would assert the same objections</p> <p>14 with respect to the ASPR excerpt that the</p> <p>15 government has inserted in this compilation, at</p> <p>16 232, as it has asserted in other ASPR excerpts that</p> <p>17 the government has sought to introduce in this</p> <p>18 deposition. To the extent that the documents</p> <p>19 provided to the witness are not referenced in his</p> <p>20 expert report and call for testimony related</p> <p>21 thereto, they exceed his expert report and are,</p> <p>22 therefore, inadmissible.</p> <p style="text-align: right;">Page 395</p>	<p>1 BY MR. BARR:</p> <p>2 Q. Are the portions of these documents</p> <p>3 which pertain to contractor responsibilities for</p> <p>4 plant security and safeguarding of classified</p> <p>5 information -- are these consistent with your</p> <p>6 experience and knowledge gained during the course</p> <p>7 of your career as a government contracting officer?</p> <p>8 MR. WINE: Objection, assumes facts</p> <p>9 not in evidence. Counsel has not shown that any of</p> <p>10 these documents relate to the subject matter that</p> <p>11 is contained within the question.</p> <p>12 A. Absolutely consistent.</p> <p>13 MR. BARR: It's 12:00 -- or I've got</p> <p>14 11:59. I think this would be a good time for us to</p> <p>15 break for lunch. I think we're doing pretty well</p> <p>16 as far as time goes, but I can't make any promises</p> <p>17 as far as when we're going to conclude for today.</p> <p>18 MR. WINE: Counsel, what is your</p> <p>19 estimate?</p> <p>20 MR. BARR: I can't be held to an</p> <p>21 estimate, but --</p> <p>22 MR. WINE: I'm not holding you to</p> <p style="text-align: right;">Page 397</p>

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<p>1 it. I'd just like it for informational purposes</p> <p>2 since we're breaking a half an hour after we</p> <p>3 started from the last break.</p> <p>4 MR. BARR: It won't be any later</p> <p>5 than when we adjourned on Wednesday.</p> <p>6 MR. WINE: 3:00?</p> <p>7 MR. BARR: That would be my guess.</p> <p>8 MR. WINE: Okay.</p> <p>9 MR. BARR: And that's all it is.</p> <p>10 THE VIDEOGRAPHER: Going off record.</p> <p>11 The time now is 11:59.</p> <p>12 (Recess: 11:59 a.m. to 12:45 p.m.)</p> <p>13 THE VIDEOGRAPHER: Going back on</p> <p>14 record. The time now is 12:45.</p> <p>15 BY MR. BARR:</p> <p>16 Q. Mr. Jordan, let me hand you again a</p> <p>17 document that we marked -- I believe it was</p> <p>18 yesterday -- Exhibit 103. This was Air Force</p> <p>19 quality control instructions, a document dated</p> <p>20 April 2, 1951. And I have put tape flags to direct</p> <p>21 your attention to certain pages, 61024, 25, 32, and</p> <p>22 35.</p> <p style="text-align: right;">Page 398</p>	<p>1 BY MR. BARR:</p> <p>2 Q. Do these portions of Exhibit 103</p> <p>3 indicate who is responsible for quality control?</p> <p>4 MR. WINE: Again, the document</p> <p>5 speaks for itself.</p> <p>6 A. Yes, they do.</p> <p>7 BY MR. BARR:</p> <p>8 Q. And what do they indicate to you?</p> <p>9 MR. WINE: Objection, assumes facts</p> <p>10 not in evidence, the document speaks for itself.</p> <p>11 A. It demonstrates that the responsibility</p> <p>12 of quality control rests with the contractor.</p> <p>13 BY MR. BARR:</p> <p>14 Q. And have you encountered any evidence in</p> <p>15 this case which indicates that the responsibility</p> <p>16 for quality control was not with Ryan or TRA?</p> <p>17 MR. WINE: Objection, assumes fact</p> <p>18 not in evidence, also mischaracterizes the</p> <p>19 document.</p> <p>20 A. I have seen no such evidence.</p> <p>21 BY MR. BARR:</p> <p>22 Q. Okay. Now, when we broke for lunch, we</p> <p style="text-align: right;">Page 400</p>
<p>1 If you would, please look at those, and</p> <p>2 then I'll have a question for you.</p> <p>3 MR. WINE: TDY asserts the same</p> <p>4 objections as it did at the introduction of</p> <p>5 Exhibit 103.</p> <p>6 A. Okay.</p> <p>7 BY MR. BARR:</p> <p>8 Q. Mr. Jordan, are you familiar with this</p> <p>9 document as a result of your expert work in this</p> <p>10 case?</p> <p>11 A. Yes, I am.</p> <p>12 Q. Were you familiar with this document</p> <p>13 during the course of your Air Force career as a</p> <p>14 government contracting officer?</p> <p>15 A. Yes, I was.</p> <p>16 Q. The pages to which I have directed your</p> <p>17 attention, these pertain to quality control, do</p> <p>18 they not?</p> <p>19 MR. WINE: Objection, the document</p> <p>20 speaks for itself.</p> <p>21 A. Yes, they do.</p> <p>22</p> <p style="text-align: right;">Page 399</p>	<p>1 were talking about responsibilities for plant</p> <p>2 security and protection of classified information.</p> <p>3 Let me show you a document. We'll mark</p> <p>4 this as an exhibit. These are minutes of the</p> <p>5 annual meeting of the stockholders of the Ryan</p> <p>6 Aeronautical Company, a meeting held on March 21st,</p> <p>7 1944, and I put a tape flag on the page ending with</p> <p>8 the Bates number 35028.</p> <p>9 (Exhibit No. 233 marked)</p> <p>10 MR. WINE: While the witness reviews</p> <p>11 the document, TDY objects on the basis of</p> <p>12 foundation and hearsay.</p> <p>13 BY MR. BARR:</p> <p>14 Q. And I'll direct your attention</p> <p>15 specifically to the last paragraph before the</p> <p>16 "there being no further business" paragraph.</p> <p>17 A. Okay.</p> <p>18 Q. Is that discussion in the minutes</p> <p>19 consistent or inconsistent with your understanding</p> <p>20 of contractor responsibilities for protecting</p> <p>21 classified information?</p> <p>22 MR. WINE: Same objection,</p> <p style="text-align: right;">Page 401</p>

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<p>1 foundation, assumes facts not in evidence. Also,</p> <p>2 it -- to the extent it exceeds the opinions</p> <p>3 articulated in the expert report and goes beyond</p> <p>4 that report, is -- it is inadmissible as such.</p> <p>5 A. It is consistent.</p> <p>6 BY MR. BARR:</p> <p>7 Q. And can you -- can you explain why you</p> <p>8 believe it's consistent?</p> <p>9 MR. WINE: Same objections.</p> <p>10 A. It is my opinion that the portions of</p> <p>11 the facility that Mr. Ryan wanted to show to the</p> <p>12 stockholders, since it excluded the experimental</p> <p>13 section, was that portion of the plant that was not</p> <p>14 dealing with classified information.</p> <p>15 MR. WINE: Same objection, assumes</p> <p>16 facts not in evidence, calls for -- based on</p> <p>17 speculation.</p> <p>18 BY MR. BARR:</p> <p>19 Q. For stockholders to have obtained access</p> <p>20 to the experimental section, what would have been</p> <p>21 necessary?</p> <p>22 MR. WINE: Objection, calls for</p> <p style="text-align: right;">Page 402</p>	<p>1 experience to which classified information</p> <p>2 pertained?</p> <p>3 MR. WINE: Same objections.</p> <p>4 A. During the portion of my career where I</p> <p>5 was the director of contracting, I had</p> <p>6 responsibility for the Air Intelligence Agency, and</p> <p>7 I had access to some extremely high -- highly</p> <p>8 classified procurement issues. And without getting</p> <p>9 into details of that kind of SEI clearance and the</p> <p>10 documents pertaining to intelligence, all of the</p> <p>11 other experiences I had with products and all of</p> <p>12 those experiences dealt with technical issues.</p> <p>13 MR. WINE: Objection, the answer is</p> <p>14 not responsive to the question.</p> <p>15 BY MR. BARR:</p> <p>16 Q. Now, let's go back and let me show you</p> <p>17 what was marked previously as government</p> <p>18 Exhibit 125, and I've placed a red tape flag on the</p> <p>19 page with the Bates number 2494. I'll ask you to</p> <p>20 take a look at that, and then I'll have a question</p> <p>21 for you.</p> <p>22 MR. WINE: TDY asserts the same</p> <p style="text-align: right;">Page 404</p>
<p>1 speculation, assumes facts not in evidence.</p> <p>2 A. They would have had, No. 1, a security</p> <p>3 clearance appropriate with the classification of</p> <p>4 the work being conducted in that facility, and</p> <p>5 then, No. 2, they'd have to have a demonstrated</p> <p>6 need to know.</p> <p>7 BY MR. BARR:</p> <p>8 Q. Now, just to be certain that I covered</p> <p>9 this earlier, based on your experience as a</p> <p>10 government contracting official, to what kinds of</p> <p>11 matters has classified information used or</p> <p>12 generated in connection with defense contracts</p> <p>13 related?</p> <p>14 MR. WINE: Objection, compound,</p> <p>15 vague and ambiguous, relevance.</p> <p>16 A. Based upon my personal experience, they</p> <p>17 dealt primarily with technical issues relative to</p> <p>18 capabilities, performance, and technical features</p> <p>19 of the product being produced.</p> <p>20 BY MR. BARR:</p> <p>21 Q. And when you say "primarily," do you</p> <p>22 recall anything else within your personal</p> <p style="text-align: right;">Page 403</p>	<p>1 objections that it had propounded when Jordan</p> <p>2 Exhibit 125 was previously introduced.</p> <p>3 2494?</p> <p>4 MR. BARR: I believe that -- 494 --</p> <p>5 2494, correct.</p> <p>6 A. Okay.</p> <p>7 BY MR. BARR:</p> <p>8 Q. Are the -- is the discussion of company</p> <p>9 responsibilities for plant security consistent with</p> <p>10 your understanding of contractor responsibilities</p> <p>11 in that regard during the time you were a</p> <p>12 contracting officer?</p> <p>13 MR. WINE: Objection, assumes facts</p> <p>14 not in evidence.</p> <p>15 A. Yes, it is.</p> <p>16 BY MR. BARR:</p> <p>17 Q. Now, Mr. Jordan, during your career,</p> <p>18 were you aware of the Big Safari Program?</p> <p>19 A. I was aware of the program, yes.</p> <p>20 Q. And what did you know about the Big</p> <p>21 Safari Program?</p> <p>22 A. I knew it existed. I knew basically</p> <p style="text-align: right;">Page 405</p>

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<p>1 what it was intended to do. As I indicated earlier</p> <p>2 in my deposition, I was the contracting officer on</p> <p>3 the B58 program at General Dynamics. They were one</p> <p>4 of the four companies that had Big Safari</p> <p>5 contracts. They had a contract for modification of</p> <p>6 the B57 for intelligence purposes; and while I was</p> <p>7 at the contractor's facility, I saw the modified</p> <p>8 RB57 sitting on the runway, and that was about the</p> <p>9 extent of what I knew about the program.</p> <p>10 Q. Okay. Let me mark in this case some</p> <p>11 additional exhibits pertaining to the Big Safari</p> <p>12 Program.</p> <p>13 (Exhibit Nos. 234 through 237</p> <p>14 marked)</p> <p>15 A. Okay.</p> <p>16 BY MR. BARR:</p> <p>17 Q. Mr. Jordan, are these documents that you</p> <p>18 reviewed in the course of your work in this case</p> <p>19 either as a 30(b)(6) witness or in your expert</p> <p>20 capacity regarding the Big Safari Program?</p> <p>21 MR. WINE: Objection to the extent</p> <p>22 that testimony or material review in the witness'</p> <p style="text-align: right;">Page 406</p>	<p>1 understanding of the nature and purpose of the Big</p> <p>2 Safari projects?</p> <p>3 A. The purpose of the Big Safari projects,</p> <p>4 as defined in Air Force Regulation 66-22, was for</p> <p>5 intelligence purposes.</p> <p>6 Q. And you're referring to what we've</p> <p>7 marked as Exhibit 234?</p> <p>8 A. Yes, I am.</p> <p>9 Q. And were -- were there some Big Safari</p> <p>10 projects performed at the Ryan facility?</p> <p>11 A. Yes, there were.</p> <p>12 Q. And this occurred in the 1960s?</p> <p>13 MR. WINE: Objection, leading,</p> <p>14 assumes facts not in evidence.</p> <p>15 A. Yes, it was.</p> <p>16 BY MR. BARR:</p> <p>17 Q. Other than documents, did you have an</p> <p>18 additional source of information as to the nature</p> <p>19 and substance of Big Safari projects at Ryan during</p> <p>20 the 1960s?</p> <p>21 A. There was a document entitled, "Big</p> <p>22 Safari Book." It was written by -- I think it was</p> <p style="text-align: right;">Page 408</p>
<p>1 capacity as a 30(b)(6) is not related to his expert</p> <p>2 report. It does not contain any opinions</p> <p>3 articulated in that report and goes beyond the</p> <p>4 scope of that report, and is, therefore,</p> <p>5 inadmissible.</p> <p>6 A. Yes, they were.</p> <p>7 BY MR. BARR:</p> <p>8 Q. If you could, summarize, please, your</p> <p>9 understanding of the nature and purpose of these</p> <p>10 Big Safari projects.</p> <p>11 MR. WINE: Objection to the extent</p> <p>12 that Counsel has referred to Big Safari projects.</p> <p>13 The question is vague and ambiguous.</p> <p>14 Also, based on the witness' prior</p> <p>15 answer describing his familiarity or understanding</p> <p>16 of the Big Safari, TDY objects that the witness is</p> <p>17 not qualified to give an opinion. He lacks</p> <p>18 sufficient basis to offer an opinion, and,</p> <p>19 therefore, it goes beyond his area of expertise.</p> <p>20 A. Could you repeat the question, please?</p> <p>21 BY MR. BARR:</p> <p>22 Q. Could you summarize, please, the -- your</p> <p style="text-align: right;">Page 407</p>	<p>1 two retired Air Force colonels, and then there was</p> <p>2 the deposition testimony of Bobbi Swan.</p> <p>3 Q. And Bobbi Swan was previously known as</p> <p>4 Robert Schwanhausser?</p> <p>5 A. That's correct.</p> <p>6 Q. Now, I'm not going to mark as an</p> <p>7 exhibit, but we'll come -- we'll come to this in</p> <p>8 just a moment. You refer to a Big Safari Story</p> <p>9 Book. And are you aware that Mr. Zoch, who has</p> <p>10 joined us here at this deposition, relied on that</p> <p>11 book for some of his opinions?</p> <p>12 MR. WINE: Objection to the extent</p> <p>13 it mischaracterizes the report of the expert</p> <p>14 witness from TDY.</p> <p>15 A. Yes, I am.</p> <p>16 BY MR. BARR:</p> <p>17 Q. Are you familiar with the term "zone of</p> <p>18 interior"?</p> <p>19 A. Yes, I am.</p> <p>20 Q. Were you familiar with that term while</p> <p>21 you were a government contracting officer?</p> <p>22 A. Yes, I was.</p> <p style="text-align: right;">Page 409</p>

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<p>1 Q. And what is your understanding of what 2 the term "zone of interior" means? 3 A. Zone of interior, during my employment 4 with the government, we primarily referred to it as 5 the continental -- within the continental limits of 6 the United States, the official definition was and 7 remains to be that area of the theater of 8 operations outside of the area of conflict or war 9 zone, if you will. 10 Q. Now, do you ever recall that Mr. Zoch 11 stated his opinion that there was a zone of 12 interior within the Harbor Drive plant? 13 A. Yes, I do. 14 MR. WINE: Objection, assumes facts 15 not in evidence. 16 BY MR. BARR: 17 Q. Have you formed an opinion regarding 18 that statement? 19 A. Yes. 20 Q. What is that opinion? 21 MR. WINE: Same objections. 22 A. Zone of interior has absolutely nothing Page 410</p>	<p>1 your expert work -- that Ryan complied with its 2 obligations concerning the protection and 3 preservation of government property? 4 MR. WINE: Objection, goes beyond 5 the scope of the witness' area of expertise. To 6 the extent that it also exceeds the scope of his 7 expert report, it is also inadmissible, assumes 8 facts not in evidence. 9 A. Yes, I did. 10 BY MR. BARR: 11 Q. Let me show you what was previously 12 marked as Exhibit 94. I have put red Post-it 13 notes. If you could, please indicate for the 14 record the Bates numbers -- well, actually, I've 15 got that information. The Bates numbers end in 290 16 and 300. 17 MR. WINE: TDY offers the same 18 objections it offered when Jordan Exhibit 94 was 19 offered by the United States initially. 20 A. Okay. 21 BY MR. BARR: 22 Q. Is this one of the Air Force reports Page 412</p>
<p>1 to do with anything within the Ryan facility or any 2 other contractor's facility. 3 MR. WINE: Same objection as to the 4 answer to the extent that it purports a term of art 5 to a term used by an expert in a different fashion. 6 It's also outside the scope of the witness' expert 7 report and is, therefore, inadmissible. 8 BY MR. BARR: 9 Q. Do you recall that Mr. Zoch cited to a 10 particular range of pages within the Big Safari 11 Story Book on which he believed that the term "zone 12 of interior" was included? 13 MR. WINE: Objection, assumes facts 14 not in evidence. The report is its best source of 15 information and speaks for itself. 16 A. Yes, I do. 17 BY MR. BARR: 18 Q. I'll take something out of order here. 19 Let me show you what we've marked previously as 20 Exhibit 94. 21 And my question is: Did you encounter 22 evidence in the course of your work in this case -- Page 411</p>	<p>1 that you had in mind when you testified regarding 2 Ryan's actions concerning government facilities 3 earlier? 4 MR. WINE: Objection, leading, 5 ambiguous, mischaracterizes the witness' prior 6 testimony. 7 A. Yes. 8 BY MR. BARR: 9 Q. Now, based on the documents that you 10 have reviewed through the lens of your experience 11 as a government contracting officer, how would you 12 characterize the nature of the contractual 13 relationships between the military services and 14 Ryan during World War II? 15 MR. WINE: Objection, exceeds the 16 witness' area of expertise in that the question 17 asks for a period before which the witness was 18 engaged as a federal official. It also goes beyond 19 the scope of his expert witness -- expert report 20 and, therefore, is inadmissible. 21 A. Based upon my years of experience, my 22 training as a contracting officer, and the Page 413</p>

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<p>1 documents that I have reviewed in connection with</p> <p>2 this case, I would characterize the relationship</p> <p>3 between Ryan and the government essentially the</p> <p>4 same as the relationship between the government and</p> <p>5 all other contractors with whom I dealt with over</p> <p>6 the years, and that is an arm's length relationship</p> <p>7 between the government and those contractors,</p> <p>8 including Ryan.</p> <p>9 MR. WINE: Object to the use of the</p> <p>10 term "arm's length" in the witness' response to the</p> <p>11 extent it has any legal meaning.</p> <p>12 BY MR. BARR:</p> <p>13 Q. Did you determine in your review of the</p> <p>14 documents pertaining to this case -- again, through</p> <p>15 the lens of your experience as a government</p> <p>16 contracting officer -- as to whether the</p> <p>17 relationship between the military and the Ryan</p> <p>18 Company was voluntary or involuntary?</p> <p>19 MR. WINE: Objection, calls for a</p> <p>20 legal conclusion, assumes facts not in evidence,</p> <p>21 goes beyond the witness' area of expertise.</p> <p>22 A. All the documents that I've reviewed</p> <p style="text-align: right;">Page 414</p>	<p>1 BY MR. BARR:</p> <p>2 Q. Did you encounter any evidence in the</p> <p>3 course of your work as an expert in this case as to</p> <p>4 whether or not the government ever coerced or</p> <p>5 forced Ryan or TRA to enter into any supply</p> <p>6 contracts?</p> <p>7 MR. WINE: Objection, assumes facts</p> <p>8 not in evidence.</p> <p>9 A. I saw no such evidence.</p> <p>10 BY MR. BARR:</p> <p>11 Q. Now, excluding terminations for</p> <p>12 convenience of the government, did you determine in</p> <p>13 your review of documents and testimony in this case</p> <p>14 whether or not the government ever required Ryan or</p> <p>15 TRA to stop making what it had previously produced</p> <p>16 and start producing something else?</p> <p>17 MR. WINE: Objection, vague and</p> <p>18 ambiguous, assumes facts not in evidence, lack of</p> <p>19 foundation, and outside the scope of the witness'</p> <p>20 expert report.</p> <p>21 A. I saw no such evidence.</p> <p>22</p> <p style="text-align: right;">Page 416</p>
<p>1 indicate that the contracts into which Ryan entered</p> <p>2 were not only voluntary, but that Ryan had</p> <p>3 aggressively pursued those contracts with the</p> <p>4 government.</p> <p>5 BY MR. BARR:</p> <p>6 Q. Now, was your answer focused on World</p> <p>7 War II, or are you including the post-war period?</p> <p>8 A. Both.</p> <p>9 Q. Now, the term "arm's length," how do you</p> <p>10 understand that term as a former contracting</p> <p>11 official?</p> <p>12 A. My understanding was and remains to be</p> <p>13 that an arm's length relationship implies and means</p> <p>14 that there is relationship between the respective</p> <p>15 parties where both parties are sincerely, honestly,</p> <p>16 and with integrity pursuing the interest of their</p> <p>17 respective parties without fear of either collusion</p> <p>18 or coercion between the parties.</p> <p>19 Q. Did you encounter any --</p> <p>20 MR. WINE: Bless you.</p> <p>21 MR. BARR: Bless you.</p> <p>22 MR. MATEER: Thank you.</p> <p style="text-align: right;">Page 415</p>	<p>1 BY MR. BARR:</p> <p>2 Q. And did you determine in your review of</p> <p>3 documents and testimony in this case, again through</p> <p>4 the lens of your experience as a government</p> <p>5 contracting officer, whether or not the military or</p> <p>6 any other part of the federal government seized or</p> <p>7 confiscated any Ryan property during World War II?</p> <p>8 MR. WINE: Same objection, assumes</p> <p>9 facts not in evidence.</p> <p>10 A. There was no evidence whatsoever that</p> <p>11 the government ever seized or threatened to seize</p> <p>12 any of the Ryan property.</p> <p>13 MR. WINE: Object to the response as</p> <p>14 nonconforming with the evidence, assumes facts not</p> <p>15 in evidence.</p> <p>16 BY MR. BARR:</p> <p>17 Q. We'll mark as the next exhibit a series</p> <p>18 of telegrams, three of which appear to be Bureau of</p> <p>19 Aeronautics telegrams, one of which appears to be a</p> <p>20 telegram from Claude Ryan, president of Ryan</p> <p>21 Aeronautical Company.</p> <p>22 (Exhibit No. 238 marked)</p> <p style="text-align: right;">Page 417</p>

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<p>1 BY MR. BARR:</p> <p>2 Q. The date of the various telegrams are</p> <p>3 all in June of 1942.</p> <p>4 MR. WINE: While the witness is</p> <p>5 reviewing the document, TDY objects on the basis of</p> <p>6 foundation and hearsay and to the extent the</p> <p>7 document is not referenced in the witness' expert</p> <p>8 report, the document and the -- and the witness'</p> <p>9 associated testimony is inadmissible as such.</p> <p>10 A. I am aware of these documents.</p> <p>11 BY MR. BARR:</p> <p>12 Q. Now, you were shown this document or</p> <p>13 series of telegrams during one of your depositions</p> <p>14 back in 2009. Do you recall that?</p> <p>15 MR. WINE: TDY objects to the extent</p> <p>16 that the document was used during the witness'</p> <p>17 30(b)(6) testimony, which is not relevant to his</p> <p>18 testimony as an expert witness.</p> <p>19 A. I believe I do recall that.</p> <p>20 BY MR. BARR:</p> <p>21 Q. Okay. In reading through the Bureau of</p> <p>22 Aeronautics telegrams that are included in this</p> <p style="text-align: right;">Page 418</p>	<p>1 on the Army and the Navy to seize those properties</p> <p>2 and turn them over to Consolidated.</p> <p>3 BY MR. BARR:</p> <p>4 Q. Well, let me be sure I'm just absolutely</p> <p>5 clear. Were the Army and the Navy in favor of the</p> <p>6 Consolidated Aircraft proposal or opposed to it?</p> <p>7 MR. WINE: Objection. This witness</p> <p>8 is not competent to testify as to the position of</p> <p>9 the Army or Navy on the basis of reading a document</p> <p>10 any more so than any other finder of fact is</p> <p>11 capable of doing, and, therefore, any opinion</p> <p>12 testimony is impermissible.</p> <p>13 A. They were aggressively opposed.</p> <p>14 BY MR. BARR:</p> <p>15 Q. Now, with respect to the post-war</p> <p>16 period, one of the Ryan and TRA lines of business</p> <p>17 were unmanned aerial vehicles. Do you recall that?</p> <p>18 MR. WINE: Objection, leading,</p> <p>19 assumes facts not in evidence.</p> <p>20 A. Yes, I do.</p> <p>21 BY MR. BARR:</p> <p>22 Q. Are you aware of any evidence of any</p> <p style="text-align: right;">Page 420</p>
<p>1 exhibit, do you perceive -- again, through the lens</p> <p>2 of your experience as a government contracting</p> <p>3 officer -- any threat to seize by the government?</p> <p>4 MR. WINE: Objection to the extent</p> <p>5 that the witness' perception is irrelevant to what</p> <p>6 was being perceived by Ryan, also to the extent the</p> <p>7 document or any opinion related to it exceeds the</p> <p>8 opinions articulated by the witness in his expert</p> <p>9 report, it is inadmissible.</p> <p>10 A. Absolutely not.</p> <p>11 BY MR. BARR:</p> <p>12 Q. In order to summarize, was it apparent</p> <p>13 to you from reading these telegrams of what the</p> <p>14 position of the Army and the position of the Navy</p> <p>15 were concerning the activities of the Consolidated</p> <p>16 Aircraft Company?</p> <p>17 MR. WINE: Objection, the document</p> <p>18 speaks for itself. Any attempt to summarize or</p> <p>19 mischaracterize the document is -- is impermissible</p> <p>20 testimony.</p> <p>21 A. They were -- they were rejecting those</p> <p>22 positions of the contractor to try to put pressure</p> <p style="text-align: right;">Page 419</p>	<p>1 kind that Ryan and TRA did not want to manufacture</p> <p>2 UAVs for the military at any time in the post-war</p> <p>3 period?</p> <p>4 MR. WINE: Objection, assumes facts</p> <p>5 not in evidence.</p> <p>6 A. I'm aware of no such evidence that they</p> <p>7 were opposed to accepting contracts from the</p> <p>8 government for UAV production.</p> <p>9 BY MR. BARR:</p> <p>10 Q. What kind of information did you gather</p> <p>11 on the subject of whether their work was voluntary</p> <p>12 or involuntary?</p> <p>13 A. Various reports, company correspondence,</p> <p>14 and the deposition testimony of Bobbi Swan.</p> <p>15 Q. And collectively, what did these</p> <p>16 documents and testimony indicate to you?</p> <p>17 MR. WINE: Objection, the documents</p> <p>18 and testimony speaks for itself. The question</p> <p>19 calls for facts not in evidence and speculation on</p> <p>20 the part of the witness.</p> <p>21 A. They voluntarily indicated -- or they</p> <p>22 indicated that they voluntarily had entered into</p> <p style="text-align: right;">Page 421</p>

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<p>1 the contracts for production of UAVs, and then that</p> <p>2 they had aggressively pursued new contracts for UAV</p> <p>3 production and they very rigorously protected the</p> <p>4 niche that they had carved -- carved out in that</p> <p>5 industry.</p> <p>6 MR. BARR: Okay. I'll mark a series</p> <p>7 of documents and -- on this subject of unmanned</p> <p>8 aerial vehicles. For the record, Exhibit 240 was</p> <p>9 Bates numbered in reverse order to the original</p> <p>10 pagination of the document. The Bates numbers are</p> <p>11 U.S. 0010962 to 964, 964 being the first page of</p> <p>12 the document, which is dated September 25, 1946.</p> <p>13 (Exhibit Nos. 239 through 247</p> <p>14 marked)</p> <p>15 MR. WINE: While the witness is</p> <p>16 reviewing the document, TDY objects on the basis of</p> <p>17 foundation and hearsay. Also, to the extent</p> <p>18 Counsel has marked a series of documents ranging</p> <p>19 from 1946 through to the 19 -- early 1990s as</p> <p>20 somehow characteristic -- characterizing the</p> <p>21 entirety of Ryan's UAV activities, it assumes facts</p> <p>22 not in evidence and constitutes hearsay.</p> <p style="text-align: right;">Page 422</p>	<p>1 which you drew the conclusion that Ryan and TRA's</p> <p>2 efforts were voluntary?</p> <p>3 MR. WINE: Objection, leading,</p> <p>4 assumes facts not in evidence.</p> <p>5 A. Yes, they were.</p> <p>6 BY MR. BARR:</p> <p>7 Q. Let's turn to TRA's work as a</p> <p>8 subcontractor on the Apache helicopter program.</p> <p>9 Are you aware of any evidence that TRA</p> <p>10 did not want to work as a subcontractor on that</p> <p>11 program?</p> <p>12 MR. WINE: Objection, assumes facts</p> <p>13 not in evidence, impermissible for the -- for the</p> <p>14 witness to offer an opinion as to what TRA wanted</p> <p>15 or thought regarding its involvement in that or any</p> <p>16 other program.</p> <p>17 A. There is no such evidence.</p> <p>18 MR. WINE: Object to the answer to</p> <p>19 the extent it assumes facts not in evidence.</p> <p>20 BY MR. BARR:</p> <p>21 Q. Did you review documents which, through</p> <p>22 the lens of your time as a government contracting</p> <p style="text-align: right;">Page 424</p>
<p>1 Also, to the extent that the</p> <p>2 documents are not referenced in the witness' expert</p> <p>3 report, it exceeds the scope of that report and,</p> <p>4 therefore, are inadmissible -- testimony related</p> <p>5 thereto is inadmissible.</p> <p>6 MR. BARR: We're off the record.</p> <p>7 THE VIDEOGRAPHER: Going off the</p> <p>8 record. The time now is 1:24.</p> <p>9 (Recess 1:24 p.m. to 1:25 p.m.)</p> <p>10 THE VIDEOGRAPHER: Going back on</p> <p>11 record. The time now is 1:25.</p> <p>12 A. I'm familiar with these documents.</p> <p>13 BY MR. BARR:</p> <p>14 Q. Are these documents that you reviewed in</p> <p>15 connection with the Ryan and TRA efforts in the</p> <p>16 field of UAVs?</p> <p>17 A. Yes.</p> <p>18 Q. And when we say "UAVs," we all</p> <p>19 understand it means "unmanned aerial vehicles."</p> <p>20 Correct?</p> <p>21 A. That is correct.</p> <p>22 Q. And are these some of the documents from</p> <p style="text-align: right;">Page 423</p>	<p>1 officer, indicated to you whether or not TRA wanted</p> <p>2 to participate in this program as a subcontractor?</p> <p>3 MR. WINE: Objection, calls for</p> <p>4 speculation. This witness is not qualified to</p> <p>5 testify regarding what TRA wanted to do with</p> <p>6 respect to participation in this program or any</p> <p>7 other program.</p> <p>8 A. Based upon my experience and training as</p> <p>9 a contracting officer and my review of documents</p> <p>10 pertaining to the subcontract between Ryan or TDY</p> <p>11 and Hughes and subsequently McDonnell Douglas for</p> <p>12 helicopter production, they not only wanted it,</p> <p>13 they aggressively defended the teaming agreement</p> <p>14 that they had with the contract -- with the prime</p> <p>15 contractor and their right to continue that</p> <p>16 production of those components.</p> <p>17 BY MR. BARR:</p> <p>18 Q. Let me show you some documents, and I'll</p> <p>19 ask you to review them and ask if they pertain to</p> <p>20 your opinions in this regard.</p> <p>21 MR. WINE: Are you stopping at 251?</p> <p>22 Do you have other documents in this series or are</p> <p style="text-align: right;">Page 425</p>

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<p>1 you --</p> <p>2 MR. BARR: Not in this series, no.</p> <p>3 (Exhibit Nos. 248 through 251</p> <p>4 marked)</p> <p>5 MR. WINE: While the witness reviews</p> <p>6 the document, TDY objects to the series of 248</p> <p>7 through 251 as lacking foundation based on -- and</p> <p>8 requiring testimony based on hearsay that is</p> <p>9 inadmissible through this witness.</p> <p>10 Also, to the extent that it is based</p> <p>11 on -- that these exhibits and the witness'</p> <p>12 testimony related thereto is not referenced in his</p> <p>13 expert report, it exceeds the scope of that report</p> <p>14 and, therefore, is inadmissible.</p> <p>15 A. Okay.</p> <p>16 BY MR. BARR:</p> <p>17 Q. Mr. Jordan, again, through the lens of</p> <p>18 your experience and career as a government --</p> <p>19 MR. BARR: Off the record.</p> <p>20 THE VIDEOGRAPHER: Going off record.</p> <p>21 The time now is 1:32.</p> <p>22 (Recess: 1:32 p.m. to 1:33 p.m.)</p> <p style="text-align: right;">Page 426</p>	<p>1 meetings?</p> <p>2 A. I participated in many program review</p> <p>3 meetings.</p> <p>4 Q. And essentially what are such meetings</p> <p>5 all about?</p> <p>6 MR. WINE: Objection, vague and</p> <p>7 ambiguous.</p> <p>8 A. The program review meetings were between</p> <p>9 the government and its various representatives and</p> <p>10 the contractor to review the program, its status,</p> <p>11 the stage of development of the product, the</p> <p>12 technical problems that had been encountered by the</p> <p>13 contractor, the adequacy of the data that had been</p> <p>14 provided by the government to the contractor for</p> <p>15 performance of the contract, and then to resolve</p> <p>16 those misunderstandings and any problems that were</p> <p>17 being encountered by the contractor in the</p> <p>18 performance of the contract.</p> <p>19 MR. BARR: Okay. I'm told that we</p> <p>20 need to change the tape in five minutes. So let's</p> <p>21 take a break now, and we'll go back on the record</p> <p>22 when the tape has been changed by the videographer.</p> <p style="text-align: right;">Page 428</p>
<p>1 THE VIDEOGRAPHER: Going back on</p> <p>2 record. The time now is 1:33.</p> <p>3 BY MR. BARR:</p> <p>4 Q. Mr. Jordan, are these some of the</p> <p>5 documents that you reviewed in the course of your</p> <p>6 work in this case in forming your opinions</p> <p>7 concerning the voluntariness or involuntariness of</p> <p>8 the TRA participation in the Apache program?</p> <p>9 MR. WINE: Is Counsel referring to</p> <p>10 30(b)(6) testimony or expert testimony?</p> <p>11 MR. BARR: Both/either.</p> <p>12 MR. WINE: Then to the extent that</p> <p>13 the question calls for testimony relating to the</p> <p>14 witness' engagement as a 30(b)(6) expert, it goes</p> <p>15 beyond the scope of the examination as an expert</p> <p>16 for the government and, therefore, is inadmissible.</p> <p>17 A. Yes, they are.</p> <p>18 BY MR. BARR:</p> <p>19 Q. Okay. Let's talk about program review</p> <p>20 meetings. In the course of your career as a</p> <p>21 government contracting official, did you</p> <p>22 participate in what are known as program review</p> <p style="text-align: right;">Page 427</p>	<p>1 THE VIDEOGRAPHER: Going off record.</p> <p>2 The time now is 1:35.</p> <p>3 (Recess: 1:35 p.m. to 1:39 p.m.)</p> <p>4 THE VIDEOGRAPHER: Going back on</p> <p>5 record. The time now is 1:39.</p> <p>6 BY MR. BARR:</p> <p>7 Q. Mr. Jordan, just to clarify, what kinds</p> <p>8 of issues were covered in these program review</p> <p>9 meetings with respect to the products?</p> <p>10 MR. WINE: Objection, vague and</p> <p>11 ambiguous.</p> <p>12 A. They were all technical issues.</p> <p>13 BY MR. BARR:</p> <p>14 Q. When you say "technical," does that</p> <p>15 include design?</p> <p>16 A. Design, performance, and all other</p> <p>17 facets of the contractor's performance -- or</p> <p>18 technical performance of the contract.</p> <p>19 Q. Now, in any of the program review</p> <p>20 meetings in which you participated, were any</p> <p>21 changes made to the contracts during such meetings?</p> <p>22 MR. WINE: Objection, relevance.</p> <p style="text-align: right;">Page 429</p>

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<p>1 A. There were no changes to the contract</p> <p>2 during the course of the program review. There may</p> <p>3 have been instances where subsequent to the program</p> <p>4 review that there was a need for a contract change,</p> <p>5 and then I subsequently issued a bilateral change</p> <p>6 to the contract. And by "bilateral," I mean it was</p> <p>7 a change that it was mutually agreed to between the</p> <p>8 contractor and the government.</p> <p>9 BY MR. BARR:</p> <p>10 Q. Now, during any of the program review</p> <p>11 meetings in which you participated, was it -- were</p> <p>12 any chemical waste disposal issues ever discussed?</p> <p>13 MR. WINE: Objection, relevance.</p> <p>14 A. No discussion whatsoever on any chemical</p> <p>15 issues.</p> <p>16 BY MR. BARR:</p> <p>17 Q. Now, over the last several days of your</p> <p>18 testimony, we've talked about the consistency over</p> <p>19 time in the policies and practices in various</p> <p>20 subjects. And I believe you've testified to that</p> <p>21 consistency.</p> <p>22 In summary, did that consistency that</p> <p style="text-align: right;">Page 430</p>	<p>1 A. Absolute consistency.</p> <p>2 BY MR. BARR:</p> <p>3 Q. The same question as to progress</p> <p>4 payments and fixed price contracts?</p> <p>5 MR. WINE: Same objection.</p> <p>6 A. Absolute consistency.</p> <p>7 BY MR. BARR:</p> <p>8 Q. Did you observe the same kind of</p> <p>9 consistency in government property clauses in cost</p> <p>10 reimbursement contracts?</p> <p>11 MR. WINE: Same objection.</p> <p>12 A. Absolute consistency.</p> <p>13 BY MR. BARR:</p> <p>14 Q. Did you observe the same kind of</p> <p>15 consistency in government inspection provisions?</p> <p>16 MR. WINE: Same objection.</p> <p>17 A. Absolute consistency.</p> <p>18 BY MR. BARR:</p> <p>19 Q. Same question with respect to</p> <p>20 contractor's rights regarding how to run their</p> <p>21 plants?</p> <p>22 MR. WINE: Same objection.</p> <p style="text-align: right;">Page 432</p>
<p>1 you've observed in the documentation extend to</p> <p>2 releases by contractors under cost reimbursement</p> <p>3 contracts?</p> <p>4 MR. WINE: Objection, assumes facts</p> <p>5 not in evidence, calls for a legal conclusion,</p> <p>6 vague and ambiguous, and leading.</p> <p>7 A. Absolutely consistent.</p> <p>8 BY MR. BARR:</p> <p>9 Q. Did that consistency that you observed</p> <p>10 include the indemnification provisions regarding</p> <p>11 the contractor's possession and use of government</p> <p>12 facilities?</p> <p>13 MR. WINE: Same objections.</p> <p>14 A. Absolutely consistent.</p> <p>15 BY MR. BARR:</p> <p>16 Q. Did the consistency that you have</p> <p>17 observed in the course of your work in this case</p> <p>18 extend to provisions relating -- or policies and</p> <p>19 practices relating to the contractor's duty for</p> <p>20 proper maintenance and care of government</p> <p>21 facilities?</p> <p>22 MR. WINE: Same objection.</p> <p style="text-align: right;">Page 431</p>	<p>1 A. Absolute consistency.</p> <p>2 BY MR. BARR:</p> <p>3 Q. In the course of your work as an expert</p> <p>4 in this case, and again through the lens of your</p> <p>5 experience as a government contracting officer, did</p> <p>6 you observe the consistency over time with respect</p> <p>7 to contractors' obligations regarding the quality</p> <p>8 control over their products?</p> <p>9 MR. WINE: Same objections.</p> <p>10 A. Absolute consistency.</p> <p>11 BY MR. BARR:</p> <p>12 Q. And again, did you observe this kind of</p> <p>13 consistency in the contractors' handling of</p> <p>14 government property upon completion of contractor</p> <p>15 performance?</p> <p>16 MR. WINE: Same objection.</p> <p>17 A. Absolute consistency.</p> <p>18 MR. BARR: The government moves the</p> <p>19 admission of all of the exhibits that have been</p> <p>20 marked for identification in this case; and at the</p> <p>21 time of trial, we will ask the Court to rule on the</p> <p>22 plaintiff's objections.</p> <p style="text-align: right;">Page 433</p>

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<p>1 And we further state for the record</p> <p>2 that the government will also be designating</p> <p>3 various portions of Mr. Jordan's testimony in 2009</p> <p>4 for admission into evidence to be considered along</p> <p>5 with the testimony that he's given on the -- on</p> <p>6 Monday, Wednesday, and today.</p> <p>7 MR. WINE: And for the record, to</p> <p>8 the extent that Mr. Jordan has offered opinions</p> <p>9 that are not contained in his expert report, TDY</p> <p>10 will move to strike those -- that testimony that</p> <p>11 exceeds the scope of his report.</p> <p>12 The government has not presented or</p> <p>13 entered into evidence documents or exhibits tied to</p> <p>14 his expert report, but has vaguely referred to</p> <p>15 documents considered by the expert witness,</p> <p>16 notwithstanding the fact that the expert report</p> <p>17 does not contain the Federal Rule of Civil</p> <p>18 Procedure listing required that it list all</p> <p>19 documents considered by the witness in the</p> <p>20 formulation of its expert report. And, therefore,</p> <p>21 TDY has been put in the position of not knowing</p> <p>22 prior to this testimony what -- what documents the</p> <p style="text-align: right;">Page 434</p>	<p>1 THE WITNESS: Okay.</p> <p>2 MR. WINE: And we look forward to</p> <p>3 seeing you then. Thank you, sir.</p> <p>4 THE VIDEOGRAPHER: This marks the</p> <p>5 end of the deposition. The time off record now is</p> <p>6 1:46.</p> <p>7 (Deposition Recessed at 1:46 p.m.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: right;">Page 436</p>
<p>1 witness specifically considered in the formulation</p> <p>2 of his opinions and, therefore, was unable to</p> <p>3 examine the witness effectively during discovery.</p> <p>4 Moreover, TDY will voir dire the</p> <p>5 witness next week per agreement of Counsel and lay</p> <p>6 a foundation as to why the witness is not qualified</p> <p>7 to offer all or some of the opinions articulated.</p> <p>8 And to the extent that the witness</p> <p>9 has not identified specific opinions for which the</p> <p>10 government is seeking to qualify him as an expert</p> <p>11 or for which he is offering in this matter, TDY</p> <p>12 reserves its rights as such.</p> <p>13 MR. BARR: We'll have the Court deal</p> <p>14 with all of your concerns at the appropriate time.</p> <p>15 MR. WINE: Understood. So we</p> <p>16 will --</p> <p>17 THE VIDEOGRAPHER: This marks --</p> <p>18 MR. WINE: Hold on. No. Just so we</p> <p>19 have it on the record. We plan to continue your</p> <p>20 deposition -- your testimonial deposition,</p> <p>21 Mr. Jordan, next Wednesday, which is October 19th,</p> <p>22 and we'll start at 10:00 a.m.</p> <p style="text-align: right;">Page 435</p>	<p>1 CERTIFICATE OF SHORTHAND REPORTER</p> <p>2 I, Steven Stogel, Certified Shorthand</p> <p>3 Reporter, the officer before whom the foregoing</p> <p>4 deposition was taken, do hereby certify that the</p> <p>5 foregoing transcript is a true and correct record</p> <p>6 of the testimony given; that said testimony was</p> <p>7 taken by me stenographically and thereafter reduced</p> <p>8 to typewriting under my supervision; and that I am</p> <p>9 neither counsel for, related to, nor employed by</p> <p>10 any of the parties to this case and have no</p> <p>11 interest, financial or otherwise, in its outcome.</p> <p>12 GIVEN UNDER MY HAND AND SEAL of office</p> <p>13 on this _____ day of _____, 2011.</p> <p>14</p> <p>15</p> <p>16</p> <p>17 _____</p> <p>18 STEVEN STOGEL, CSR, CLR</p> <p>19 Texas Certified Shorthand Reporter</p> <p>20 CSR No. 6174</p> <p>21 Certified LiveNote Reporter</p> <p>22 Expiration Date: 12/31/2012</p> <p style="text-align: right;">Page 437</p>

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<p>1 Tommy Jordan c/o</p> <p>2 DICKSTEIN SHAPIRO, L.L.P.</p> <p>3 1825 Eye Street NW</p> <p>4 Washington, D.C. 20006-5403</p> <p>5</p> <p>6 Case: TDY Holdings v. United States of America</p> <p>7 Date of deposition: 10/14/11</p> <p>8 Deponent: Tommy Jordan</p> <p>9</p> <p>10 Please be advised that the transcript in the above</p> <p>11 referenced matter is now complete and ready for signature.</p> <p>12 The deponent may come to this office to sign the transcript,</p> <p>13 a copy may be purchased for the witness to review and sign,</p> <p>14 or the deponent and/or counsel may waive the option of signing.</p> <p>15 Please advise us of the option selected.</p> <p>16 Please forward the errata sheet and the original signed</p> <p>17 signature page to counsel noticing the deposition, noting the applicable</p> <p>18 time period allowed for such by the governing Rules of Procedure.</p> <p>19 If you have any questions, please do not hesitate to call our office at</p> <p>20 (202)-232-0646.</p> <p>21 Sincerely,</p> <p>22 Digital Evidence Group</p> <p>Copyright 2011 Digital Evidence Group</p> <p>Copying is forbidden, including electronically, absent express written consent</p> <p style="text-align: right;">Page 438</p>	<p>1 Digital Evidence Group, L.L.C.</p> <p>2 1299 Pennsylvania Ave NW, Suite 1130E</p> <p>3 Washington, D.C. 20004</p> <p>4 (202) 232-0646</p> <p>5</p> <p style="text-align: center;">ERRATA SHEET</p> <p>6</p> <p>7</p> <p>8 Case Name: TDY Holdings v. United States of America</p> <p>9 Witness Name: Tommy Jordan</p> <p>10 Deposition Date: 10/14/11</p> <p>11 Page No. Line No. Change</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 _____</p> <p>22 Signature Date</p> <p style="text-align: right;">Page 440</p>
<p>1 Digital Evidence Group, L.L.C.</p> <p>2 1299 Pennsylvania Ave NW, Suite 1130E</p> <p>3 Washington, D.C. 20004</p> <p>4 (202) 232-0646</p> <p>5</p> <p style="text-align: center;">SIGNATURE PAGE</p> <p>6</p> <p>7</p> <p>8 Case Name: TDY Holdings v. United States of America</p> <p>9 Witness Name: Tommy Jordan</p> <p>10 Deposition Date: 10/14/11</p> <p>11 I do hereby acknowledge that I have read</p> <p>12 and examined the foregoing pages</p> <p>13 of the transcript of my deposition and that:</p> <p>14</p> <p>15 (Check appropriate box):</p> <p>16 () The same is a true, correct and</p> <p>17 complete transcription of the answers given by</p> <p>18 me to the questions therein recorded.</p> <p>19 () Except for the changes noted in the</p> <p>20 attached Errata Sheet, the same is a true,</p> <p>21 correct and complete transcription of the</p> <p>22 answers given by me to the questions therein</p> <p>recorded.</p> <p>DATE WITNESS SIGNATURE</p> <p style="text-align: right;">Page 439</p>	

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

TDY HOLDINGS, LLC, and	§
TDY INDUSTRIES, INC.	§
	§
Plaintiffs,	§
	§
VS.	§ Case No. 07cv0787 JAH
	§
UNITED STATES OF AMERICA,	§
UNITED STATES DEPARTMENT	§
OF DEFENSE, and ROBERT M.	§
GATES, in his official	§
capacity as SECRETARY OF	§
DEFENSE	§
	§
Defendants.	§

Videotaped Deposition of
TOMMY B. JORDAN
San Antonio, Texas
Wednesday, October 19, 2011
9:43 a.m.

Volume 4

Reported by: Marcy Clark, CSR, CLR

DIGITAL EVIDENCE GROUP
1299 Pennsylvania Avenue, NW Suite 1130E
Washington, DC 20004
(202) 232-0646

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3	Bradley D. Wine	3	October 19, 2011
4	Michael C. Mateer	4	
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6	1825 Eye Street NW	6	Exhibit 252 Excerpt from FAR 52.232-16 - 610
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<p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: This is the start</p> <p>3 of the deposition of Tommy B. Jordan, Volume 4.</p> <p>4 Today is Wednesday, October 19th, 2011. Time on</p> <p>5 record now is 9:43.</p> <p>6 TOMMY B. JORDAN,</p> <p>7 having been previously sworn, continued to testify</p> <p>8 as follows:</p> <p>9 EXAMINATION</p> <p>10 BY MR. WINE:</p> <p>11 Q. Good morning, Mr. Jordan. We've met</p> <p>12 several times before. My name is Brad Wine for</p> <p>13 Allegheny Technologies, actually TDY Holdings and</p> <p>14 TDY Industries, plaintiffs in this matter. With me</p> <p>15 are my colleagues, Mike Mateer, expert witness for</p> <p>16 TDY in this matter, Bob Zoch and counsel for</p> <p>17 Allegheny Technologies, TDY Industries and TDY</p> <p>18 Holdings, John Tishok.</p> <p>19 We're here for purposes of your</p> <p>20 cross-examination from -- from last week's</p> <p>21 testimony; and before we begin, I just want to</p> <p>22 remind you that your oath that you took last Monday</p> <p style="text-align: right;">Page 446</p>	<p>1 its closure?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. And from that time period,</p> <p>4 obviously some of the opinions that you've offered</p> <p>5 in this matter relate to the World War II period,</p> <p>6 correct?</p> <p>7 A. That is correct.</p> <p>8 Q. Okay. Now, your work for the United</p> <p>9 States government began in 1962 if my notes are</p> <p>10 correct; is that right?</p> <p>11 A. That's correct.</p> <p>12 Q. And your work experience with the Federal</p> <p>13 Government, with government contracts -- you had no</p> <p>14 prior experience with government contracting prior</p> <p>15 to 1962; is that correct?</p> <p>16 A. That is correct.</p> <p>17 Q. Okay. Can you describe for me in greater</p> <p>18 detail the training courses that you took when you</p> <p>19 began your federal service in 1962 as they related</p> <p>20 to government contracting?</p> <p>21 A. The first formal course that I recall was</p> <p>22 in 1963, and I believe it was March 1963. It was a</p> <p style="text-align: right;">Page 448</p>
<p>1 is still in effect.</p> <p>2 Is that your understanding, sir?</p> <p>3 A. My understanding.</p> <p>4 Q. All right. Now, I want to deal first with</p> <p>5 some preliminary issues that Mr. Barr discussed with</p> <p>6 you on Monday of last week. You're being offered as</p> <p>7 an expert in government contracts matters; is that</p> <p>8 correct, sir?</p> <p>9 A. That is correct.</p> <p>10 Q. Okay. And at various points in time</p> <p>11 throughout your testimony, you referred to the</p> <p>12 relevant time period for this litigation.</p> <p>13 Can I get a sense from you as to what</p> <p>14 you believe the relevant time period for this</p> <p>15 litigation is?</p> <p>16 MR. BARR: Objection, vague and</p> <p>17 ambiguous.</p> <p>18 A. Approximately 1939 until approximately</p> <p>19 1999.</p> <p>20 BY MR. WINE:</p> <p>21 Q. 1939 being roughly the year in which the</p> <p>22 site began its operations and then 1999 the year of</p> <p style="text-align: right;">Page 447</p>	<p>1 four-week basic contracting course conducted by the</p> <p>2 Army at Fort Lee, Virginia; but prior to that, I had</p> <p>3 worked extensively under the tutelage of an</p> <p>4 experienced contracting officer.</p> <p>5 Then my first line supervisor was</p> <p>6 also a very experienced contracting official,</p> <p>7 contracting officer; and I worked under their</p> <p>8 guidance from the day I started work at Hill Air</p> <p>9 Force Base until -- well, until I was granted a</p> <p>10 contracting officer warrant in December of 1964.</p> <p>11 Q. I take it that the two individuals you</p> <p>12 just referred to, sir, were in federal employment</p> <p>13 during the World War II period?</p> <p>14 A. To the best of my knowledge, they were.</p> <p>15 Q. And what specifically did they teach you</p> <p>16 or offer to you in supervising you about government</p> <p>17 contracting during the World War II period?</p> <p>18 A. That was 60 years ago, and I don't</p> <p>19 specifically recall anything that they taught me</p> <p>20 where they alluded to any differences in the period</p> <p>21 of World War II than -- than the period that we were</p> <p>22 talking about then.</p> <p style="text-align: right;">Page 449</p>

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<p>1 Q. Okay. And what specific coursework, if 2 any, did you take, sir, that related to government 3 contracting during the World War II period? 4 A. To the best of my recollection, I took no 5 courses that were specifically related to 6 contracting during World War II. 7 Q. Is it fair to say, sir, that your opinions 8 in this matter regarding pre-1962 issues are -- are 9 based entirely on your review of documents and 10 regulations from that time period and comparing them 11 to the regulations and contracts that you worked 12 with during your federal employment? 13 MR. BARR: Objection, argumentative, 14 compound, vague and ambiguous. 15 A. If you include in the definition of 16 documents correspondence on the record that was 17 generated during the World War II period and 18 regulations and contracts that were written during 19 that period of World War II, yes. 20 BY MR. WINE: 21 Q. Okay. In your decades-long career in 22 government contracting, sir, how much of your time Page 450</p>	<p>1 A. There were performance or program reviews 2 during the performance of the contract where the 3 government and the contractor would meet together 4 and the contractor would review the status of his 5 developmental effort so the government could 6 ascertain whether or not that development was 7 consistent with the govern -- government objectives. 8 Q. What about a situation where a contractor, 9 during an R&D effort, was encountering some issues? 10 Did you ever experience the government working, 11 again collaboratively, with the contractor to 12 address and -- and seek to rectify those issues or 13 problems? 14 MR. BARR: Objection, vague and 15 ambiguous. 16 A. If the contractor felt there were 17 deficiencies in the data that the government had 18 provided to the contractor, we would review the 19 contractor's request for clarification; and to the 20 extent appropriate, we would amend the contract to 21 provide clarification to the contractor of the 22 government intent. Page 452</p>
<p>1 was spent in conjunction with research and 2 development efforts? 3 A. I don't think I can give you a precise 4 percentage. I did have experience writing a number 5 of contracts where the government solicitation had 6 consisted of a performance-type specification, and 7 the respondent contractors were expected to develop 8 a product and propose a product that was produced in 9 accordance with those performance parameters that 10 were included in the government specifications. 11 Q. Did any of those contracts involve the 12 government working collaboratively with those 13 contractors to meet those specifications or to 14 develop an end item? 15 A. Would you give me a definition of what you 16 mean, "collaboratively"? 17 Q. That there would be exchanges between the 18 contractor and the government during the 19 manufacturing process, during the research and 20 development process, that would perhaps have an 21 impact on what the end item looked like or how it 22 performed. Page 451</p>	<p>1 BY MR. WINE: 2 Q. Would this be -- with respect to the 3 interactions that I've described for you, sir, would 4 that be more the function of an ACO or a PCO? 5 A. Any changes to the contract that would be 6 issued to amend the data that had been provided to 7 the contract would be a function of the PCO and not 8 the ACO. 9 Q. But what if the problems didn't require a 10 change in the contract? For example, the 11 specifications of how the end item was to perform 12 didn't change, but because of the R&D nature of the 13 effort, the way you got about to those end product 14 specifications needed to change? 15 Would that be a function of the ACO 16 or the PCO's oversight? 17 MR. BARR: Objection, vague and 18 ambiguous, speculative. 19 A. I don't know what you're talking about 20 relative to a change in the specification that would 21 not precipitate a change in the contract. 22 Page 453</p>

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<p>1 BY MR. WINE:</p> <p>2 Q. What about a change in processes to get</p> <p>3 you to a specification? Would that be a function --</p> <p>4 MR. BARR: Same objection.</p> <p>5 BY MR. WINE:</p> <p>6 Q. -- of the ACO or the PCO?</p> <p>7 MR. BARR: Same objections.</p> <p>8 A. The processes that the contractor employed</p> <p>9 in order to comply with the government</p> <p>10 specifications -- if you recall, the prior</p> <p>11 deposition testimony by Mr. Ianucci, he said that</p> <p>12 those process specifications were submitted to the</p> <p>13 government for review and approval; and I think my</p> <p>14 deposition testimony in 2009 indicated that the</p> <p>15 result of that review and approval process was a</p> <p>16 mutually agreed to set of process specifications.</p> <p>17 BY MR. WINE:</p> <p>18 Q. And -- and those were -- manifested</p> <p>19 themselves in the MPD, correct?</p> <p>20 A. In the case of this contractor, yes, it</p> <p>21 was an MPD.</p> <p>22 Q. Okay. And in reviewing your 2009</p> <p style="text-align: right;">Page 454</p>	<p>1 BY MR. WINE:</p> <p>2 Q. You never served as an ACO, correct, sir?</p> <p>3 A. That is correct.</p> <p>4 Q. You don't -- you did not actually</p> <p>5 administer contracts during your -- your</p> <p>6 decades-long tenure with the Federal Government?</p> <p>7 A. I did not serve as an administrative</p> <p>8 contracting officer.</p> <p>9 Q. And you never served as a property</p> <p>10 administrator for the government?</p> <p>11 A. That is correct.</p> <p>12 Q. And you never -- you never witnessed</p> <p>13 operations at the Ryan plant directly through your</p> <p>14 federal employment?</p> <p>15 A. I think that during my earlier deposition,</p> <p>16 I testified that I had no recollection of any</p> <p>17 contracts with Teledyne Ryan at that location.</p> <p>18 Q. And sitting here today, has your</p> <p>19 recollection changed, sir?</p> <p>20 A. It has not.</p> <p>21 Q. Okay. And again, I just want to do a</p> <p>22 couple of tie-ups from -- from our 2009 effort.</p> <p style="text-align: right;">Page 456</p>
<p>1 testimony, you're aware that research and</p> <p>2 development contracts and other experimental</p> <p>3 contracts were performed at the Ryan site, correct?</p> <p>4 A. I am aware that there were contracts that</p> <p>5 could be construed as research and development, yes.</p> <p>6 Q. All right. But you're unable to quantify</p> <p>7 how many?</p> <p>8 A. Since we do not have a definitive record</p> <p>9 of all of the contracts that were performed at this</p> <p>10 site, I cannot quantify how many.</p> <p>11 Q. Okay. Is there a different degree of</p> <p>12 interaction between the government and a contractor</p> <p>13 on an R&D contract than on a production contract,</p> <p>14 sir?</p> <p>15 MR. BARR: Objection, vague and</p> <p>16 ambiguous.</p> <p>17 A. I don't necessarily agree with the word</p> <p>18 "interaction," but there is more discussion between</p> <p>19 the government and the contractor on a developmental</p> <p>20 effort than on a production of an item that had been</p> <p>21 previously produced.</p> <p>22</p> <p style="text-align: right;">Page 455</p>	<p>1 You've never spoken with -- directly with anyone who</p> <p>2 was involved with operations at the Ryan plant,</p> <p>3 correct?</p> <p>4 MR. BARR: Objection, vague and</p> <p>5 ambiguous.</p> <p>6 A. What do you mean "operations"?</p> <p>7 BY MR. WINE:</p> <p>8 Q. Anyone that -- that worked for Ryan.</p> <p>9 A. That is correct.</p> <p>10 Q. Okay. You did have conversations with</p> <p>11 government officials that were either resident at</p> <p>12 Ryan or took cognizance of issues at Ryan, correct?</p> <p>13 A. That was my previous testimony, yes.</p> <p>14 Q. Since you gave me your testimony in 2009,</p> <p>15 have you had any other discussions with individuals</p> <p>16 with cognizance of Ryan activities?</p> <p>17 A. I have not.</p> <p>18 Q. Okay. All right. Now, aside from your</p> <p>19 expert witness testimony in the Miami-Dade matter,</p> <p>20 what other experience, if any, did you have, sir, in</p> <p>21 handling environmental matters for the United States</p> <p>22 government?</p> <p style="text-align: right;">Page 457</p>

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<p>1 A. I think my prior deposition testimony</p> <p>2 indicated that during the closure process at Kelly</p> <p>3 Air Force Base, I was a senior executive at the</p> <p>4 San Antonio air material area; and we had a number</p> <p>5 of environmental issues that were associated with</p> <p>6 the closure of Kelly and then the transfer of the</p> <p>7 real property from the Air Force to the City of</p> <p>8 San Antonio.</p> <p>9 Q. Uh-huh.</p> <p>10 A. And then I had been a participant in many</p> <p>11 of the briefings conducted by our environmental</p> <p>12 people relative to environmental issues at Kelly Air</p> <p>13 Force Base.</p> <p>14 Q. Did any of those briefings relate to the</p> <p>15 source of TCE contamination at Kelly Air Force Base?</p> <p>16 A. Yes, they did.</p> <p>17 Q. And what could you tell me about those</p> <p>18 briefings, sir?</p> <p>19 MR. BARR: Objection, beyond the</p> <p>20 scope of direct.</p> <p>21 A. During the early days of Kelly Air Force</p> <p>22 Base, Kelly overhauled most, if not all, of the</p> <p style="text-align: right;">Page 458</p>	<p>1 operations began in 1917 or 1919.</p> <p>2 Q. Okay. And were you briefed during these</p> <p>3 conversations, sir, that that means of disposing of</p> <p>4 TCE was common during that period of time?</p> <p>5 MR. BARR: Objection, beyond the</p> <p>6 scope of the direct, relevance, beyond the scope of</p> <p>7 the witness' expertise.</p> <p>8 A. To the best of my recollection, it was</p> <p>9 common within the Air Force. I don't know what was</p> <p>10 common within industry.</p> <p>11 BY MR. WINE:</p> <p>12 Q. Okay. Aside from your work on the BRAC</p> <p>13 effort at Kelly, did you have any other</p> <p>14 responsibilities relating to environmental matters</p> <p>15 during your federal tenure?</p> <p>16 A. Other than as we indicated in my</p> <p>17 deposition on -- last week, there were a couple of</p> <p>18 ASPR provisions relative to environmental issues in</p> <p>19 the Seventies and then the inclusion of those</p> <p>20 environmental clauses in contracts starting, I</p> <p>21 believe, in 1975, no, sir.</p> <p>22 Q. Those are the ASPR provisions regarding</p> <p style="text-align: right;">Page 460</p>
<p>1 radial reciprocating engines that we used within the</p> <p>2 Air Force; and the overhaul of those radial</p> <p>3 reciprocating engines employed a significant volume</p> <p>4 of degreasers. And, to my recollection, TCE was one</p> <p>5 of the primary degreasers that was used in that</p> <p>6 process.</p> <p>7 And at that point in time, there was</p> <p>8 a -- what they called an evaporation pit or several</p> <p>9 evaporation pits --</p> <p>10 THE REPORTER: Or what?</p> <p>11 THE WITNESS: Evaporation pits.</p> <p>12 A. -- where the spent TCEs were dumped into</p> <p>13 those evaporation pits and then that leached into</p> <p>14 the soil.</p> <p>15 BY MR. WINE:</p> <p>16 Q. Do you --</p> <p>17 MR. BARR: Objection, relevance.</p> <p>18 BY MR. WINE:</p> <p>19 Q. Do you know what time period that was,</p> <p>20 sir, where that -- that evaporation pit was used?</p> <p>21 A. During the World War II period and</p> <p>22 possibly prior to World War II because Kelly</p> <p style="text-align: right;">Page 459</p>	<p>1 contractor requirements for compliance with state</p> <p>2 and local and federal environmental laws?</p> <p>3 A. It was the Clean Air and Water Act, and</p> <p>4 then there was a marking of hazardous material.</p> <p>5 Then there was a subsequent requirement that if a</p> <p>6 government official witnessed any violations of</p> <p>7 environmental laws, they were to report it.</p> <p>8 Q. Okay. Were you involved at all with the</p> <p>9 Air Force in the discussions that the Department of</p> <p>10 Defense had in the early 1990s regarding discussions</p> <p>11 with industry about allowability of environmental</p> <p>12 costs in overhead that ultimately made its way into</p> <p>13 that 1992 DCAA guidance that you saw last week with</p> <p>14 Mr. Barr?</p> <p>15 MR. BARR: Objection, vague and</p> <p>16 ambiguous.</p> <p>17 A. What do you mean by involve --</p> <p>18 "involvement"?</p> <p>19 BY MR. WINE:</p> <p>20 Q. Were you part of any discussions or</p> <p>21 working groups within the government talking about</p> <p>22 what the government's position should be and how</p> <p style="text-align: right;">Page 461</p>

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<p>1 regulation should be developed relating to the</p> <p>2 recoverability of environmental costs by</p> <p>3 contractors?</p> <p>4 A. Not to my recollection.</p> <p>5 Q. Okay. Now, how -- you mentioned when --</p> <p>6 during your testimony with Mr. Barr that you had</p> <p>7 visited a number of -- of contractors' plan -- and</p> <p>8 subcontractors' plants during your federal tenure.</p> <p>9 Do you remember that deposition</p> <p>10 testimony, sir?</p> <p>11 A. Yes, I do.</p> <p>12 Q. How many of those site visits for those</p> <p>13 plants -- how many of those plants were undergoing</p> <p>14 environmental remediation efforts, to your</p> <p>15 knowledge?</p> <p>16 MR. BARR: Objection, relevance,</p> <p>17 beyond the scope of the witness' expertise, his</p> <p>18 reports and opinions.</p> <p>19 A. To the best of my recollection, that was</p> <p>20 not one of the issues that we discussed when I was</p> <p>21 visiting those contractors' facilities.</p> <p>22</p> <p style="text-align: right;">Page 462</p>	<p>1 A. I think they're essentially</p> <p>2 interchangeable.</p> <p>3 BY MR. WINE:</p> <p>4 Q. Okay. So, you're not using them, say, in</p> <p>5 the -- in the same manner that -- that federal</p> <p>6 statutes use those terms as a term of art?</p> <p>7 A. That is correct.</p> <p>8 Q. Likewise, the term "chemical waste," are</p> <p>9 you -- is -- do you connote any specific</p> <p>10 particularity to your usage of the term "chemical</p> <p>11 waste," sir?</p> <p>12 A. The chemical wastes, in my mind, were</p> <p>13 those chemicals that were used either in the plating</p> <p>14 process and/or the anodizing process by this</p> <p>15 specific contractor.</p> <p>16 Q. What about TCE? Do you consider that to</p> <p>17 be a chemical waste, sir?</p> <p>18 MR. BARR: Objection, vague and</p> <p>19 ambiguous.</p> <p>20 A. It is included in the -- my definition of</p> <p>21 chemical waste, yes.</p> <p>22</p> <p style="text-align: right;">Page 464</p>
<p>1 BY MR. WINE:</p> <p>2 Q. Did it ever come to your attention that</p> <p>3 any of those contractors that you visited were</p> <p>4 having to undergo environmental remediation efforts,</p> <p>5 sir?</p> <p>6 MR. BARR: Same objections.</p> <p>7 A. Not that I recall.</p> <p>8 BY MR. WINE:</p> <p>9 Q. And you weren't involved in any</p> <p>10 discussions regarding the government's share of</p> <p>11 liability for those cleanups?</p> <p>12 A. Not that I recall.</p> <p>13 Q. Okay. Now, last week during your -- your</p> <p>14 direct testimony with Mr. Barr, you used the terms</p> <p>15 "hazardous substances" and "hazardous material"</p> <p>16 somewhat interchangeably.</p> <p>17 Did you mean to distinguish between</p> <p>18 the two terms, or is there a difference in your mind</p> <p>19 between those two terms in your use of them?</p> <p>20 MR. BARR: Objection,</p> <p>21 mischaracterizes the witness' testimony and my</p> <p>22 questions, vague and ambiguous.</p> <p style="text-align: right;">Page 463</p>	<p>1 BY MR. WINE:</p> <p>2 Q. And what about PCBs?</p> <p>3 A. PCBs?</p> <p>4 Q. Correct.</p> <p>5 MR. BARR: Same objections.</p> <p>6 A. Not within the sense that it was used in</p> <p>7 one of the cleaning and/or anodizing processes.</p> <p>8 BY MR. WINE:</p> <p>9 Q. Do you know, if at all, sir, whether PCBs</p> <p>10 were used at this site?</p> <p>11 A. Based upon prior deposition testimony by</p> <p>12 other witnesses, I do recall that there were PCBs</p> <p>13 used in several applications.</p> <p>14 Q. Okay. And based on your understanding</p> <p>15 through their testimony of the use of PCBs at this</p> <p>16 site, do you consider PCBs to be a chemical waste</p> <p>17 as use -- as you have used that term?</p> <p>18 A. I don't recall any application of PCBs in</p> <p>19 either the cleaning process and/or the anodizing</p> <p>20 processes.</p> <p>21 Q. Okay. And why is it that -- that the</p> <p>22 definition of an item as a chemical waste depends on</p> <p style="text-align: right;">Page 465</p>

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<p>1 its use in your mind in a cleaning process or in an</p> <p>2 anodizing process?</p> <p>3 MR. BARR: Objection, vague and</p> <p>4 ambiguous, confusing.</p> <p>5 A. Possibly because I have a degree in</p> <p>6 chemistry. Other than that, I don't know.</p> <p>7 BY MR. WINE:</p> <p>8 Q. Okay. And in your mind, sir, is there a</p> <p>9 distinction between chemical wastes and hazardous</p> <p>10 substances?</p> <p>11 MR. BARR: Objection, vague and</p> <p>12 ambiguous, beyond the witness' expertise.</p> <p>13 BY MR. WINE:</p> <p>14 Q. Just as you've used that term throughout</p> <p>15 this matter?</p> <p>16 A. Chemical waste --</p> <p>17 MR. BARR: Objection to</p> <p>18 mischaracterizing the witness' testimony.</p> <p>19 A. Chemical waste would be considered to be</p> <p>20 hazardous substances.</p> <p>21 BY MR. WINE:</p> <p>22 Q. Okay. Now, you've never served as a DCAA</p> <p style="text-align: right;">Page 466</p>	<p>1 Q. Okay. Is there anywhere in your expert</p> <p>2 report that I can go to that spells out your</p> <p>3 involvement with DCAA cost accounting regulations,</p> <p>4 sir?</p> <p>5 MR. BARR: Objection, the report</p> <p>6 speaks for itself.</p> <p>7 A. I'm sorry I didn't memorize every word in</p> <p>8 my expert report so I can tell you specifically.</p> <p>9 BY MR. WINE:</p> <p>10 Q. Do you recall whether you discussed at all</p> <p>11 an application of DCAA auditing -- I mean, DCAA cost</p> <p>12 accounting regulations in either of your expert</p> <p>13 reports, sir?</p> <p>14 MR. BARR: Same objection.</p> <p>15 A. I'm sorry. I don't recall.</p> <p>16 BY MR. WINE:</p> <p>17 Q. Okay. Have you, during your federal</p> <p>18 employment, ever been called upon to determine</p> <p>19 whether a contractor's costs are allocable to a</p> <p>20 particular contract?</p> <p>21 A. I reviewed a number of determinations by</p> <p>22 DCAA as to allocability of costs, but I never made</p> <p style="text-align: right;">Page 468</p>
<p>1 auditor, correct, sir?</p> <p>2 A. That is correct.</p> <p>3 Q. And you testified, if I -- if I understand</p> <p>4 correctly, that DCAA is a completely separate agency</p> <p>5 from the DCMA or from the ACOs, that they report</p> <p>6 through an entirely different chain of command up</p> <p>7 through the Department of Defense.</p> <p>8 Do I understand your testimony</p> <p>9 correctly, sir?</p> <p>10 A. That is my understanding.</p> <p>11 Q. Okay. Now, what experience, sir, do you</p> <p>12 have in cost accounting regulations?</p> <p>13 A. Well, as I had testified earlier and in my</p> <p>14 expert report, I believe I alluded to the fact that</p> <p>15 I had negotiated a significant number of contracts</p> <p>16 based upon cost and pricing data submitted by</p> <p>17 contractors that had been audited by DCAA and</p> <p>18 evaluated by the CMA officials.</p> <p>19 And based upon my familiarity with</p> <p>20 regulations and the negotiation of those contracts,</p> <p>21 I think I understood and do still understand a lot</p> <p>22 of the accounting regulations fairly well.</p> <p style="text-align: right;">Page 467</p>	<p>1 the initial determination of allocability.</p> <p>2 Q. Did you ever, in your review of DCAA</p> <p>3 determinations, take exception with the findings of</p> <p>4 the DCAA?</p> <p>5 A. Not to my recollection.</p> <p>6 Q. Have you ever been involved during your</p> <p>7 federal tenure in determining whether a contractor's</p> <p>8 costs are allowable pursuant to applicable cost</p> <p>9 accounting regulations?</p> <p>10 A. I reviewed a number of DCAA reports where</p> <p>11 they had made a determination of allowability; but</p> <p>12 to the best of my recollection, I didn't -- never</p> <p>13 made the initial determination of allowability of</p> <p>14 cost.</p> <p>15 Q. And did you ever take any exception to any</p> <p>16 of those findings of allowability by the DCAA?</p> <p>17 A. Not to my recollection.</p> <p>18 Q. And what about a determination by DCAA</p> <p>19 about -- regarding the reasonableness of a</p> <p>20 contractor's costs? Same answer?</p> <p>21 A. Not necessarily.</p> <p>22 Q. Have you ever reviewed any DCAA -- during</p> <p style="text-align: right;">Page 469</p>

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<p>1 your federal tenure, conclusions by the DCAA of the</p> <p>2 reasonableness of costs being claimed by a</p> <p>3 contractor for cost accounting purposes?</p> <p>4 A. Would you repeat the question, please?</p> <p>5 Q. Sure. During your federal tenure, have</p> <p>6 you ever reviewed conclusions by the DCAA of the</p> <p>7 reasonableness of costs being claimed by a</p> <p>8 contractor for cost accounting purposes?</p> <p>9 A. Yes.</p> <p>10 Q. And describe for me when you did that,</p> <p>11 sir.</p> <p>12 A. On basically every negotiated procurement</p> <p>13 that was based upon cost and pricing data, there was</p> <p>14 a determination, either by the DCAA or personnel</p> <p>15 within the DCASR, as to reasonableness of the</p> <p>16 contractor's proposed costs. And then I also, as a</p> <p>17 contracting officer, made determinations as to</p> <p>18 reasonableness of costs based upon the adequacy of</p> <p>19 the contractor's cost and pricing data that was</p> <p>20 submitted.</p> <p>21 Q. During your federal tenure, sir, you were</p> <p>22 never involved in determining the allocability of</p> <p style="text-align: right;">Page 470</p>	<p>1 DCAA had made a determination that the contractor's</p> <p>2 environmental costs were unreasonable.</p> <p>3 Q. But that's not the question I asked you,</p> <p>4 sir.</p> <p>5 I asked you whether you were offering</p> <p>6 an opinion in this matter as to the reasonableness</p> <p>7 of the environmental costs that Ryan is seeking to</p> <p>8 recover, TDY is seeking to recover in this</p> <p>9 litigation?</p> <p>10 A. My opinion was predicated upon that DCAA</p> <p>11 report that I just referenced.</p> <p>12 Q. So, what is your opinion, sir, in that</p> <p>13 regard?</p> <p>14 A. My opinion is that the DCAA made a</p> <p>15 determination that some of the costs were</p> <p>16 unreasonable, and I have no reason to question that</p> <p>17 determination.</p> <p>18 Q. Okay. Insofar as there are costs that</p> <p>19 Ryan is seeking recovery for, TDY is seeking</p> <p>20 recovery for in this matter that were not the</p> <p>21 subject of the 1995 audit process, have you</p> <p>22 formulated an opinion, sir, in this matter regarding</p> <p style="text-align: right;">Page 472</p>
<p>1 environmental costs to a particular government</p> <p>2 contractor, correct?</p> <p>3 MR. BARR: Objection, asked and</p> <p>4 answered.</p> <p>5 A. Not to my recollection.</p> <p>6 BY MR. WINE:</p> <p>7 Q. And you were never involved in the</p> <p>8 decision-making process as to whether or not a</p> <p>9 particular government contractor's environmental</p> <p>10 costs were allowable, correct?</p> <p>11 A. Best of my recollection, no.</p> <p>12 Q. And you were never involved in the</p> <p>13 decision-making process as to whether or not a</p> <p>14 government contractor's environmental costs were</p> <p>15 reasonable, correct?</p> <p>16 A. If you limit it to environmental costs,</p> <p>17 no.</p> <p>18 Q. Okay. And you're not offering an opinion,</p> <p>19 sir, as to whether or not Ryan's environmental costs</p> <p>20 in this matter were reasonable, are you?</p> <p>21 A. Based upon the DCAA audit reports that I</p> <p>22 reviewed, there was at least one instance where the</p> <p style="text-align: right;">Page 471</p>	<p>1 the reasonableness of those costs?</p> <p>2 MR. BARR: Objection, calls for</p> <p>3 speculation, incomplete hypothetical, vague and</p> <p>4 ambiguous.</p> <p>5 A. Inasmuch as I have not seen all of the</p> <p>6 details relative to all of those cost submissions</p> <p>7 and the results of the government evaluation of that</p> <p>8 cost submission or those cost submissions, I'm</p> <p>9 afraid I cannot offer an opinion as to all of the</p> <p>10 costs during that period.</p> <p>11 MR. BARR: Also, beyond the scope of</p> <p>12 the direct.</p> <p>13 BY MR. WINE:</p> <p>14 Q. And with respect to the DCAA audit report</p> <p>15 that you referred to in the question -- in the</p> <p>16 answer before the last question I offered you, sir,</p> <p>17 your opinion simply is that you reviewed documents</p> <p>18 wherein DCAA questioned the reasonableness of the</p> <p>19 costs that Ryan had included in its overhead rates</p> <p>20 from the early 1990s, correct?</p> <p>21 MR. BARR: Objection, misstates the</p> <p>22 witness' prior testimony.</p> <p style="text-align: right;">Page 473</p>

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<p>1 A. There was a specific amount that they</p> <p>2 referenced based upon contractor submissions, that</p> <p>3 is correct.</p> <p>4 BY MR. WINE:</p> <p>5 Q. Okay. Do you know the ultimate outcome of</p> <p>6 the decision-making process between DCAA and Ryan</p> <p>7 regarding that dispute regarding the reasonableness</p> <p>8 of costs being claimed by Ryan for those cleanup</p> <p>9 matters?</p> <p>10 A. That was one of the primary bases for the</p> <p>11 settlement and advance agreement that had been</p> <p>12 negotiated between the government and the contractor</p> <p>13 and executed by the administrative contracting</p> <p>14 officer and Ryan officials.</p> <p>15 Q. And that's the Convair advance agreement,</p> <p>16 correct?</p> <p>17 A. I don't remember it being called the</p> <p>18 Convair advance agreement. I think the title that I</p> <p>19 recall was "Advance in Settlement Agreement," but it</p> <p>20 was in regard to cleanup of the contamination that</p> <p>21 had been introduced into the Convair lagoon through</p> <p>22 the storm drains.</p> <p style="text-align: right;">Page 474</p>	<p>1 that the costs were reasonable or unreasonable.</p> <p>2 BY MR. WINE:</p> <p>3 Q. Okay. And you're not here to go beyond</p> <p>4 what is stated in that document, are you, sir?</p> <p>5 A. I am not.</p> <p>6 Q. Okay. Now, you don't have any legal</p> <p>7 training, correct, sir?</p> <p>8 A. That is correct.</p> <p>9 Q. And -- but some of the testimony that you</p> <p>10 offered last week with Mr. Barr and some of the</p> <p>11 opinions in your expert report seek to interpret</p> <p>12 regulations, particularly ASPRs and FARs; is that</p> <p>13 correct?</p> <p>14 MR. BARR: Objection, vague and</p> <p>15 ambiguous in the use of the word "interpret."</p> <p>16 A. Let me clarify my last answer.</p> <p>17 As I stated during my 2009</p> <p>18 deposition, I did have one course in commercial</p> <p>19 contract law; but other than that, I have no formal</p> <p>20 training in -- in law.</p> <p>21 BY MR. WINE:</p> <p>22 Q. Okay. Are you offering opinions that are</p> <p style="text-align: right;">Page 476</p>
<p>1 Q. Okay. And the government didn't take a</p> <p>2 firm position regarding the reasonableness of the</p> <p>3 costs being claimed by Ryan in that advance</p> <p>4 agreement, did it?</p> <p>5 MR. BARR: Objection, vague and</p> <p>6 ambiguous, the documents speak for themselves.</p> <p>7 BY MR. WINE:</p> <p>8 Q. You're offering an opinion about that.</p> <p>9 So, I want to know what your understanding is, sir.</p> <p>10 MR. BARR: Same --</p> <p>11 A. Best of --</p> <p>12 MR. BARR: -- objections.</p> <p>13 A. Best of my recollection, there is no word</p> <p>14 in that advance in settlement agreement that says</p> <p>15 the costs are considered to be reasonable.</p> <p>16 BY MR. WINE:</p> <p>17 Q. But is there anything in that agreement</p> <p>18 where the government says it concluded that the</p> <p>19 costs were not reasonable?</p> <p>20 MR. BARR: Same objections; documents</p> <p>21 speak for themselves.</p> <p>22 A. Best of my recollection, it does not say</p> <p style="text-align: right;">Page 475</p>	<p>1 meant to interpret regulations in this matter, sir?</p> <p>2 MR. BARR: Same objection as to</p> <p>3 "interpret."</p> <p>4 A. Since I spent the majority of my federal</p> <p>5 career in contracting and as I had indicated</p> <p>6 earlier, for most of that career, I had copies of</p> <p>7 the regulations either on my desk or within a few</p> <p>8 feet of my desk and I referred to those regulations</p> <p>9 some days multiple times every day, I think that I</p> <p>10 am qualified to read regulations as they pertain to</p> <p>11 various contracting situations. And if you call</p> <p>12 that interpretation, then, yes, I did interpret</p> <p>13 regulations.</p> <p>14 BY MR. WINE:</p> <p>15 Q. So, I just want to make sure I understand</p> <p>16 what you -- when you use the word "interpret," what</p> <p>17 you mean that to be. It's reading regulations?</p> <p>18 A. It is reading regulations and then</p> <p>19 applying those regulations to various contracting</p> <p>20 situations.</p> <p>21 Q. Okay. And that's what you're doing in</p> <p>22 this case?</p> <p style="text-align: right;">Page 477</p>

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<p>1 MR. BARR: Objection, misstates the</p> <p>2 witness' prior testimony, argumentative, vague and</p> <p>3 ambiguous.</p> <p>4 A. I am reading regulations. I am looking at</p> <p>5 contracts. I am looking at various pieces of</p> <p>6 correspondence that were within that relevant time</p> <p>7 frame and then basing my opinions upon that</p> <p>8 collective body of evidence, yes.</p> <p>9 BY MR. WINE:</p> <p>10 Q. And if I recall your testimony last week</p> <p>11 correctly, you testified on numerous occasions that</p> <p>12 the environmental regimes that you were testifying</p> <p>13 about remained consistent for a period of decades;</p> <p>14 is that correct?</p> <p>15 MR. BARR: Objection, misstates the</p> <p>16 witness' testimony. Object to the phrase</p> <p>17 "environmental regimes."</p> <p>18 MR. WINE: I didn't use the term</p> <p>19 "environmental regimes."</p> <p>20 MR. BARR: Yes, you did. I'm reading</p> <p>21 it.</p> <p>22</p> <p style="text-align: right;">Page 478</p>	<p>1 Q. Did you review any board of contract</p> <p>2 appeals opinions that applied any of the ASPR</p> <p>3 excerpts that you testified about last week in</p> <p>4 preparation for your expert report?</p> <p>5 A. I did review a number of decisions of the</p> <p>6 Armed Services board of contract appeals pertaining</p> <p>7 to some disputes between the government and this</p> <p>8 specific contractor in preparation for my earlier</p> <p>9 deposition and expert report.</p> <p>10 Q. But what about with respect to the ASPR</p> <p>11 provisions that you testified about in your expert</p> <p>12 report, sir? Did you review any board of contract</p> <p>13 appeals decisions relating to those, sir?</p> <p>14 A. The board of contract appeal decisions</p> <p>15 that I reviewed may have alluded to various ASPR</p> <p>16 provisions; but as I sit here today, I can't</p> <p>17 specifically tell you which provision of ASPR they</p> <p>18 alluded to.</p> <p>19 Q. What about court of federal claims</p> <p>20 decisions? Have you reviewed any court of federal</p> <p>21 claims decisions analyzing or applying any of the</p> <p>22 ASPR provisions that you included in your testimony</p> <p style="text-align: right;">Page 480</p>
<p>1 BY MR. WINE:</p> <p>2 Q. Regulatory regimes.</p> <p>3 A. My deposition testimony last week stated</p> <p>4 that in many of the instances, the regulations</p> <p>5 covering various issues had remained remarkably</p> <p>6 consistent throughout the relevant period of at</p> <p>7 least 1948, which was the first edition of the ASPR</p> <p>8 through the end of the relevant period.</p> <p>9 Q. Did you review any of the statutes that</p> <p>10 underlie the ASPR, sir, in preparation for your</p> <p>11 expert report?</p> <p>12 A. I don't recall reading any of the statutes</p> <p>13 in preparation for my expert report. I did review a</p> <p>14 number of statutes during my career that were behind</p> <p>15 those regulations and -- as well as various</p> <p>16 testimony to committees of the -- the Congress that</p> <p>17 had resulted in those statutes, yes.</p> <p>18 Q. Did you review any journal articles</p> <p>19 regarding the various ASPR provisions and excerpts</p> <p>20 that Mr. Barr showed you in preparation for your</p> <p>21 expert report?</p> <p>22 A. Not to my recollection.</p> <p style="text-align: right;">Page 479</p>	<p>1 in preparation for your expert report?</p> <p>2 A. During my career, I did review a number of</p> <p>3 court of claims decisions. I can't specifically</p> <p>4 relate any of those decisions to anything within my</p> <p>5 expert report.</p> <p>6 Q. Same thing for federal circuit decisions,</p> <p>7 sir?</p> <p>8 A. During my career, I do recall seeing</p> <p>9 several federal circuit decisions; but I can't</p> <p>10 specifically relate those decisions to anything</p> <p>11 within my expert report.</p> <p>12 Q. Okay. How about state court decisions?</p> <p>13 A. Since the contracts that I participated in</p> <p>14 the award of during my career were federal cases,</p> <p>15 federal regulations, I don't recall anything that</p> <p>16 ever came up to a state court.</p> <p>17 Q. It's true in your experience, sir, that</p> <p>18 courts sometimes interpret regulations in a manner</p> <p>19 that's different from the Department of Defense,</p> <p>20 correct?</p> <p>21 MR. BARR: Objection, vague and</p> <p>22 ambiguous, overly broad.</p> <p style="text-align: right;">Page 481</p>

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<p>1 A. Since I am not familiar with every</p> <p>2 decision by every federal court, I cannot</p> <p>3 specifically answer that question to your</p> <p>4 satisfaction.</p> <p>5 BY MR. WINE:</p> <p>6 Q. Are court decisions regarding the</p> <p>7 interpretation of regulations, including ASPRs,</p> <p>8 binding upon executive agencies or federal agencies</p> <p>9 such as the Department of Defense, sir?</p> <p>10 MR. BARR: Objection, calls for a</p> <p>11 legal opinion.</p> <p>12 A. Since I don't --</p> <p>13 MR. BARR: Vague and ambiguous,</p> <p>14 beyond the scope of the direct.</p> <p>15 A. Since I don't have training in law, I</p> <p>16 can't specifically answer that question.</p> <p>17 BY MR. WINE:</p> <p>18 Q. It's true, isn't it, sir, that DOD's own</p> <p>19 interpretation of regulations sometimes change over</p> <p>20 a period of time?</p> <p>21 MR. BARR: Vague and ambiguous.</p> <p>22 A. There are instances where the government</p> <p style="text-align: right;">Page 482</p>	<p>1 government will offer in support of its case?</p> <p>2 MR. BARR: Objection, calls for an</p> <p>3 evidentiary ruling, is a legal opinion.</p> <p>4 A. I think in my deposition testimony last</p> <p>5 week, I indicated several ways in which I thought my</p> <p>6 expert opinions could help the judge in arriving at</p> <p>7 his -- his decisions.</p> <p>8 As I indicated, I think in 2009, I am</p> <p>9 not familiar with the judge. I don't know him</p> <p>10 personally. I don't know his background. I don't</p> <p>11 know how much he is personally aware of the terms of</p> <p>12 art that are used within government contracts; and</p> <p>13 therefore, I am offering my opinions in an attempt</p> <p>14 to assist him if he thinks he needs that assistance.</p> <p>15 BY MR. WINE:</p> <p>16 Q. If the parties were to stipulate as to the</p> <p>17 meaning of a term of art that is relevant in this</p> <p>18 matter, would that require you to testify in this</p> <p>19 case as an expert?</p> <p>20 MR. BARR: Objection, overly broad,</p> <p>21 vague and speculative, ambiguous.</p> <p>22 A. If I understand your -- your question --</p> <p style="text-align: right;">Page 484</p>
<p>1 does, in fact, change its regulations because of</p> <p>2 various situations that come up, either performance</p> <p>3 by contractors indicates that there are ambiguities</p> <p>4 in those regulations that require clarification</p> <p>5 and/or there are laws promulgated that necessitate a</p> <p>6 change in regulations, yes.</p> <p>7 BY MR. WINE:</p> <p>8 Q. Now, the ASPR provisions that Mr. Barr</p> <p>9 showed you last week in this matter, they aren't</p> <p>10 ambiguous, are they, sir?</p> <p>11 MR. BARR: Question argumentative,</p> <p>12 overly broad.</p> <p>13 A. I think we discussed that in 2009. It</p> <p>14 depends on your training in contract issues, how</p> <p>15 many regulations you have read, your experience base</p> <p>16 as to whether or not it would be considered to be</p> <p>17 ambiguous or not.</p> <p>18 BY MR. WINE:</p> <p>19 Q. Okay. And it's your position, sir,</p> <p>20 that -- that federal judge -- in this case, Judge</p> <p>21 Houston -- needs expert testimony in order to read</p> <p>22 and understand the regulations that perhaps the</p> <p style="text-align: right;">Page 483</p>	<p>1 your question, if you and Mr. Barr agree on a</p> <p>2 definition of a term of art, whether or not Mr. Barr</p> <p>3 would seek my opinion, I cannot answer that</p> <p>4 question.</p> <p>5 BY MR. WINE:</p> <p>6 Q. Okay. In several instances last week, you</p> <p>7 described the ASPR expert -- excerpts that Mr. Barr</p> <p>8 showed you as remarkably consistent over time.</p> <p>9 What does that mean, that</p> <p>10 something -- that a series of regulations remain</p> <p>11 remarkably consistent?</p> <p>12 A. If you go back to the earliest editions of</p> <p>13 ASPR through the current Federal Acquisition</p> <p>14 Regulations, either the words are the same or the</p> <p>15 meanings within those words, in my opinion, are</p> <p>16 remarkably consistent through time.</p> <p>17 Q. Would you agree with me, sir, that even</p> <p>18 the change of one word within a regulation could</p> <p>19 have a legally significant difference on how that</p> <p>20 regulation's applied?</p> <p>21 MR. BARR: Objection, hypothetical,</p> <p>22 speculative, vague and ambiguous.</p> <p style="text-align: right;">Page 485</p>

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<p>1 A. Depends on what word you're talking about.</p> <p>2 BY MR. WINE:</p> <p>3 Q. Okay. Now, you didn't read every document</p> <p>4 that was produced in this litigation, did you, sir?</p> <p>5 A. I think my deposition testimony indicated</p> <p>6 I had reviewed well in excess of a thousand. I did</p> <p>7 not keep a detailed inventory of the documents. So,</p> <p>8 I can't give you a precise number that I reviewed;</p> <p>9 but based upon documentation that I have seen, there</p> <p>10 are documents that I probably did not know exist or</p> <p>11 either I thought that they were not relevant to the</p> <p>12 issues that I was interested in.</p> <p>13 So, to answer the question, I have</p> <p>14 not reviewed every document that was generated</p> <p>15 during this deposition or this litigation period.</p> <p>16 Q. Now, there's no section in your expert</p> <p>17 report or rebuttal report that lays out or describes</p> <p>18 the methodology that you employed to formulate your</p> <p>19 opinions in this matter, is there?</p> <p>20 MR. BARR: Objection, the reports</p> <p>21 speak for themselves.</p> <p>22 A. As I sit here today, I can't specifically</p> <p style="text-align: right;">Page 486</p>	<p>1 will ascertain the processes that I used in order to</p> <p>2 come up with my opinions.</p> <p>3 Q. Now, when we talked in 2009, you explained</p> <p>4 that there was no list or collection of documents or</p> <p>5 source that I could go to to describe what all the</p> <p>6 documents were that you reviewed in the preparation</p> <p>7 of the report. Then you testified that the major</p> <p>8 documents that you relied upon were found in the</p> <p>9 footnotes of your report.</p> <p>10 Do you remember that testimony from</p> <p>11 2009?</p> <p>12 A. Yes, I do.</p> <p>13 Q. Now, of the 251 exhibits that were marked</p> <p>14 in evidence last week during your expert deposition</p> <p>15 or your testimonial deposition, 84 of them are</p> <p>16 referenced in your expert reports. 167 aren't</p> <p>17 referenced in either of those documents.</p> <p>18 Why didn't you bother to cite to</p> <p>19 those 167 documents in your reports, sir?</p> <p>20 MR. BARR: Objection, argumentative.</p> <p>21 A. As I indicated in my expert report, that I</p> <p>22 reserve the right to supplement my opinions based</p> <p style="text-align: right;">Page 488</p>
<p>1 tell you whether there is or isn't.</p> <p>2 BY MR. WINE:</p> <p>3 Q. Okay. Well, why don't I show you your</p> <p>4 expert reports. These, sir, were marked Jordan</p> <p>5 Exhibits 3 and 4. If you hold on a second, I'll get</p> <p>6 it off the credenza so you can have the official</p> <p>7 copy.</p> <p>8 Just so the record adequately</p> <p>9 reflects, I've handed the -- the witness what was</p> <p>10 marked last week on Monday as Exhibits 3 and 4 for</p> <p>11 purposes of Mr. Jordan's testimonial deposition,</p> <p>12 which were described then as his rebuttal report and</p> <p>13 his expert report in this matter.</p> <p>14 If you'd like to look through that</p> <p>15 and familiarize yourself, tell me whether or not</p> <p>16 either of those documents lay out the methodology</p> <p>17 that you used to formulate your opinions in this</p> <p>18 matter.</p> <p>19 A. (Reviewing documents) There is no one</p> <p>20 precise statement within my expert report that says,</p> <p>21 "This is the methodology that I used"; but if you</p> <p>22 read the sum and substance of my expert report, you</p> <p style="text-align: right;">Page 487</p>	<p>1 upon evidence that I saw subsequent to the 26th of</p> <p>2 October of 2009. In my preparation for this</p> <p>3 deposition, I have continued my review of documents</p> <p>4 and evidence, either documents that I had but did</p> <p>5 not include in my expert report or documents that</p> <p>6 were provided to me either through my request or</p> <p>7 upon discovery by DOJ. And so, those, I assume, are</p> <p>8 the documents that you're alluding to in your --</p> <p>9 your question.</p> <p>10 BY MR. WINE:</p> <p>11 Q. When did you conduct this supplemental</p> <p>12 review, sir?</p> <p>13 A. I began preparation for my depositions</p> <p>14 about two months ago, two and a half months ago.</p> <p>15 Q. Okay. Now, you've added -- you've offered</p> <p>16 additional opinions that are not contained in your</p> <p>17 expert report of two years ago; is that correct,</p> <p>18 sir?</p> <p>19 A. The only opinion that I can recall off the</p> <p>20 top of my head that was not contained in my expert</p> <p>21 report was relative to progress payments.</p> <p>22 Q. And why did you offer an opinion on</p> <p style="text-align: right;">Page 489</p>

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<p>1 progress payments, sir?</p> <p>2 A. In October of 2009, I was not aware that</p> <p>3 the progress payments was an issue that had been</p> <p>4 brought up; and I think you brought it up subsequent</p> <p>5 to October of 2009.</p> <p>6 Q. Did you ever make any effort, sir, to</p> <p>7 draft a supplemental expert report prior to your</p> <p>8 testimonial deposition that commenced last week?</p> <p>9 A. I made no effort because I didn't know it</p> <p>10 was required.</p> <p>11 Q. Okay. Did you ask DOJ whether there was a</p> <p>12 requirement in that regard?</p> <p>13 MR. BARR: Objection.</p> <p>14 A. I did not specifically ask if there was a</p> <p>15 requirement, since I made the judgment decision that</p> <p>16 if there was a requirement, DOJ would advise me.</p> <p>17 BY MR. WINE:</p> <p>18 Q. And we'll get to progress payments in a</p> <p>19 little while as to the substance; but specifically,</p> <p>20 what opinions are you offering in this matter</p> <p>21 regarding progress payments -- yes -- regarding</p> <p>22 progress payments?</p> <p style="text-align: right;">Page 490</p>	<p>1 title.</p> <p>2 And I think that I expressed the</p> <p>3 opinion last week that the material to which the</p> <p>4 government assumed title through the process of</p> <p>5 progress payments were those things of value that</p> <p>6 the government could assume title to protect its</p> <p>7 interest in the monies advanced to the contract</p> <p>8 through -- contractor through progress payments,</p> <p>9 that there were provisions in the regulations and</p> <p>10 contracts that contain progress payments that</p> <p>11 specifically stated that once the contractor had</p> <p>12 completed all of his obligations to the government,</p> <p>13 that the title to any residual property would revert</p> <p>14 back to the contractor.</p> <p>15 There were provisions in the contract</p> <p>16 and the documentation that alluded to the</p> <p>17 responsibilities of the contractor or the authority</p> <p>18 for the contractor to sell property or scrap, if you</p> <p>19 will, including that material for which he had</p> <p>20 received progress payments without prior government</p> <p>21 approval and that there were no documents -- no</p> <p>22 documentation that I recall seeing that indicated</p> <p style="text-align: right;">Page 492</p>
<p>1 MR. BARR: Objection, witness'</p> <p>2 testimony speaks for itself, overly broad, vague and</p> <p>3 ambiguous.</p> <p>4 A. I think if you go back and read my</p> <p>5 deposition testimony last week, you will find out</p> <p>6 what my opinions were relative to progress payments.</p> <p>7 BY MR. WINE:</p> <p>8 Q. Okay. But sitting here today, if I ask</p> <p>9 you, sir, as an expert for the government and</p> <p>10 government contracting, what opinions in this matter</p> <p>11 are you offering regarding progress payments, can</p> <p>12 you answer that question?</p> <p>13 MR. BARR: Same objections.</p> <p>14 A. I think I can.</p> <p>15 BY MR. WINE:</p> <p>16 Q. Okay. And what opinions are you offering</p> <p>17 in this matter regarding progress payments?</p> <p>18 A. That the progress payments were applicable</p> <p>19 only to fixed-price contracts because there were no</p> <p>20 provisions for progress payments in cost</p> <p>21 reimbursable contracts, that in those contracts,</p> <p>22 there were provisions for the government to assume</p> <p style="text-align: right;">Page 491</p>	<p>1 that any of the hazardous materials were considered</p> <p>2 to have any value.</p> <p>3 There was a specific letter by the</p> <p>4 contractor in the 1990s -- I don't recall the</p> <p>5 specific date -- where the contractor had made a --</p> <p>6 one of the vice presidents of the contractor had</p> <p>7 specifically made a statement that notwithstanding</p> <p>8 the fact that the government may have assumed either</p> <p>9 title or a lien through progress payments, that the</p> <p>10 contractor retained ownership to all of the property</p> <p>11 until it had been disposed of or sold back to the</p> <p>12 government.</p> <p>13 Q. Okay. And what methodology did you</p> <p>14 employ -- first of all, let me get to a preliminary</p> <p>15 question.</p> <p>16 When were you asked, if you were</p> <p>17 asked at all, to formulate those opinions, sir?</p> <p>18 A. I can't specifically tell you when.</p> <p>19 Q. Was it this year?</p> <p>20 A. Yes.</p> <p>21 Q. Was it two months ago?</p> <p>22 A. It was within the last two, two and a half</p> <p style="text-align: right;">Page 493</p>

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<p>1 months.</p> <p>2 Q. Okay. And one of your opinions deals with</p> <p>3 the term, as used in the ASPRs if I remember your</p> <p>4 testimony today and last week correctly, the term</p> <p>5 "material," holding title to material.</p> <p>6 Do you recall that testimony, sir?</p> <p>7 A. I don't recall specifically using the word</p> <p>8 "material."</p> <p>9 Q. I think you had given a definition to the</p> <p>10 term "material" as having value. I'm sorry. I'm</p> <p>11 just trying to find an actual excerpt from your</p> <p>12 testimony. It might be up here. Hold on one</p> <p>13 second.</p> <p>14 I apologize. I found the testimony,</p> <p>15 and it's consistent with my recollection of your</p> <p>16 testimony last week. "In certain contracts, there</p> <p>17 were provisions for the government to assume title.</p> <p>18 And I think that I expressed the opinion last week</p> <p>19 that the material to which the government assumed</p> <p>20 title through the process of progress payments were</p> <p>21 those things of value that the government could</p> <p>22 assume title to protect its interest in the monies</p> <p style="text-align: right;">Page 494</p>	<p>1 the contractor under progress payments.</p> <p>2 Q. Do you recall Mr. Barr asking you</p> <p>3 questions about this last Wednesday, sir?</p> <p>4 A. I cannot specifically recall exactly what</p> <p>5 questions Mr. Barr asked me over those three days of</p> <p>6 deposition testimony.</p> <p>7 Q. On Wednesday, Mr. Barr asked you, "Did any</p> <p>8 of the contracts which used the word 'materials,'</p> <p>9 define that word."</p> <p>10 And you answered, "Based on my</p> <p>11 recollection, they were basically defined as those</p> <p>12 things that had value and those materials that were</p> <p>13 entered into and made a part of the product being</p> <p>14 produced by the government."</p> <p>15 Do you recall that testimony, sir?</p> <p>16 A. Isn't that what I just said?</p> <p>17 Q. Do you recall that testimony, sir?</p> <p>18 A. Since you refreshed my memory, yes.</p> <p>19 Q. And do you recall defining the term</p> <p>20 "material" in your expert report, sir?</p> <p>21 A. Not specifically, no.</p> <p>22 Q. Go ahead and turn to Page 16 of Exhibit 3.</p> <p style="text-align: right;">Page 496</p>
<p>1 advanced to the contract -- through contractor --</p> <p>2 through progress payments."</p> <p>3 Is there a specific definition of the</p> <p>4 word "material" in the ASPRs that you rely upon for</p> <p>5 that aspect of your testimony or opinions, sir?</p> <p>6 A. I can't point you to a specific definition</p> <p>7 within ASPR. That definition of material is based</p> <p>8 upon my experience and commonsense application of</p> <p>9 regulations.</p> <p>10 As I stated during my 2009</p> <p>11 deposition, based upon my experience, material has</p> <p>12 been those things that were entered into and made a</p> <p>13 part of the item being produced and delivered to the</p> <p>14 government.</p> <p>15 The commonsense definition includes,</p> <p>16 for the purposes of progress payments, those things</p> <p>17 that do have value because if there is no value to</p> <p>18 the item, whether it's a material or non-material</p> <p>19 item, then there is no purpose of trying to obtain</p> <p>20 title or a lien to that property because it would</p> <p>21 not serve the purpose of protecting the government's</p> <p>22 financial interest to the monies being advanced to</p> <p style="text-align: right;">Page 495</p>	<p>1 And while you're finding it on Page 16, I'll read</p> <p>2 from your report.</p> <p>3 "Material means such property as may</p> <p>4 be incorporated into or attached to the end products</p> <p>5 to be delivered to the government or as may be</p> <p>6 consumed or expended in the performance of a</p> <p>7 contract. It includes, but is not limited to, raw</p> <p>8 and process material, parts, components, assemblies,</p> <p>9 expendable small tools and consumable supplies.</p> <p>10 Do you see that, sir?</p> <p>11 A. That's what the report says, yes.</p> <p>12 Q. Is TCE a consumable supply, sir?</p> <p>13 A. It is a consumable supply; but for</p> <p>14 purposes of progress payments, it has no value.</p> <p>15 Q. Do contractors have to pay money in order</p> <p>16 to get TCE to use in degreasers, for example?</p> <p>17 A. I saw no evidence that they charged the</p> <p>18 cleaning materials, such as TCE, as a direct item of</p> <p>19 cost; but it was probably included in the</p> <p>20 contractor's overhead.</p> <p>21 Q. Why would it be included in overhead if it</p> <p>22 had no value?</p> <p style="text-align: right;">Page 497</p>

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<p>1 A. It -- it represents a cost that the</p> <p>2 contractor would have to expend in order to perform</p> <p>3 the contract.</p> <p>4 Q. Is chromium a consumable supply, sir, in</p> <p>5 the context of this plant?</p> <p>6 A. To the extent that there were processes</p> <p>7 employed by the contractor for chrome plating</p> <p>8 certain products prior to delivery, it would be</p> <p>9 considered to be a -- or the materials used by the</p> <p>10 contractor to affect that plating process would be</p> <p>11 consumable.</p> <p>12 Q. Would cutting oils be a consumable supply</p> <p>13 at the site, sir?</p> <p>14 A. To the extent that they are purchased by</p> <p>15 the contractor for application to government and</p> <p>16 commercial contracts, they would be consumable.</p> <p>17 Q. And likewise, lubricants, aside from</p> <p>18 cutting oils, used in machine tools and other</p> <p>19 manufacturing processes at the site?</p> <p>20 A. Best of my knowledge, they would be</p> <p>21 considered to be allowable and allocable costs.</p> <p>22 Q. Okay. Besides your opinions regarding</p> <p style="text-align: right;">Page 498</p>	<p>1 payments?</p> <p>2 A. As I had indicated last week, I reviewed</p> <p>3 regulations. I reviewed contracts. I reviewed</p> <p>4 various pieces of correspondence. I reviewed DCAA</p> <p>5 audit reports. I reviewed various reports. I</p> <p>6 reviewed contractor reports to their stockholders,</p> <p>7 and that represented the collective body of evidence</p> <p>8 that I reviewed in preparation for my deposition.</p> <p>9 Q. Sitting here today, sir, can you point me</p> <p>10 to what documents you specifically reviewed in</p> <p>11 formulating your expert opinions regarding progress</p> <p>12 payments?</p> <p>13 A. I think those documents were included in</p> <p>14 the 251 exhibits to my deposition last week. I</p> <p>15 can't specifically sit here, as I sit here today,</p> <p>16 and tell you specifically which ones of those 251</p> <p>17 documents pertain to the issue of progress reports.</p> <p>18 Q. Are there any documents that you reviewed</p> <p>19 in formulating opinions regarding progress payments</p> <p>20 that weren't marked as exhibits last week?</p> <p>21 A. Not that I can specifically recall.</p> <p>22 MR. WINE: Why don't we take a break?</p> <p style="text-align: right;">Page 500</p>
<p>1 progress payments, are you offering any other expert</p> <p>2 opinions in this matter that were not contained in</p> <p>3 Exhibits 3 or 4?</p> <p>4 A. Not that I can --</p> <p>5 MR. BARR: Objection, asked and</p> <p>6 answered.</p> <p>7 A. Not that I can recall as I sit here.</p> <p>8 BY MR. WINE:</p> <p>9 Q. Are there any opinions in Exhibit 3 or 4</p> <p>10 that you're disclaiming at this point or are not</p> <p>11 offering to the court as opinions in this matter?</p> <p>12 A. Not that I can specifically recall.</p> <p>13 Q. How much time did you spend, sir,</p> <p>14 developing your opinions regarding progress payments</p> <p>15 in this matter?</p> <p>16 A. I cannot specifically tell you how much</p> <p>17 time I spent on that one specific issue because I</p> <p>18 didn't break down the time that I spent in</p> <p>19 preparation for my deposition into various topics</p> <p>20 and issues.</p> <p>21 Q. What did you do -- what efforts did you</p> <p>22 engage in to prepare your opinion regarding progress</p> <p style="text-align: right;">Page 499</p>	<p>1 We've been going for about an hour. Off record.</p> <p>2 THE VIDEOGRAPHER: Going off record.</p> <p>3 Time now is 10:47.</p> <p>4 (Recess from 10:47 a.m. to 10:55</p> <p>5 a.m.)</p> <p>6 THE VIDEOGRAPHER: Going back on</p> <p>7 record. Time now is 10:55.</p> <p>8 BY MR. WINE:</p> <p>9 Q. In 2009, Mr. Jordan, I asked you if you</p> <p>10 had an understanding as to how many contracts were</p> <p>11 performed at the Ryan site from 1938 until 1999.</p> <p>12 Do you recall me asking that</p> <p>13 question?</p> <p>14 A. Yes.</p> <p>15 Q. And because of the -- the state of the</p> <p>16 record, the absence of documents, I think it was</p> <p>17 your response it was impossible to tell; is that</p> <p>18 correct?</p> <p>19 A. As I recall in my deposition, that is my</p> <p>20 answer, yes.</p> <p>21 Q. Can you provide, based on your experience,</p> <p>22 sir, and your knowledge of the Ryan site that you've</p> <p style="text-align: right;">Page 501</p>

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<p>1 accumulated during the course of your engagement in</p> <p>2 this matter an approximation as to the number of</p> <p>3 contracts you believe were -- were performed at this</p> <p>4 site during its decades-long, 60-year history?</p> <p>5 MR. BARR: Objection, asked and</p> <p>6 answered.</p> <p>7 A. I have no information today that I didn't</p> <p>8 have in 2009 relative to the numbers of documents or</p> <p>9 number of contracts that were performed.</p> <p>10 BY MR. WINE:</p> <p>11 Q. Could it have been in the thousands based</p> <p>12 on your experience, sir?</p> <p>13 MR. BARR: Objection, speculative.</p> <p>14 A. I have no idea. I think -- I could only</p> <p>15 guess.</p> <p>16 BY MR. WINE:</p> <p>17 Q. Okay. Let's talk about the 1940s. During</p> <p>18 that operating period, the Ryan site, do you know</p> <p>19 what percentage of the work Ryan was doing was of a</p> <p>20 government nature?</p> <p>21 MR. BARR: Objection, vague and</p> <p>22 ambiguous, "government nature."</p> <p style="text-align: right;">Page 502</p>	<p>1 whether those were subcontracts under military</p> <p>2 contracts; or were they commercial subcontracts?</p> <p>3 A. I saw no evidence that would differentiate</p> <p>4 between those two.</p> <p>5 Q. Okay. So, sitting here today for the</p> <p>6 entire decade of the 1940s, are you able to</p> <p>7 determine how much of Ryan's work during that decade</p> <p>8 was for a government customer and how much of it was</p> <p>9 for a commercial customer?</p> <p>10 MR. BARR: Same objections.</p> <p>11 A. Based upon the evidence that I saw and the</p> <p>12 documents that I reviewed, there was no</p> <p>13 differentiation between those con -- types of</p> <p>14 contracts; and so I cannot answer that question.</p> <p>15 BY MR. WINE:</p> <p>16 Q. How about for the 1950s?</p> <p>17 MR. BARR: Same objections.</p> <p>18 A. Other than some references in the reports</p> <p>19 to their stockholders, I don't recall seeing any</p> <p>20 documentation that alluded to that kind of</p> <p>21 differentiation.</p> <p>22</p> <p style="text-align: right;">Page 504</p>
<p>1 BY MR. WINE:</p> <p>2 Q. Was for a government customer?</p> <p>3 A. During the period of the war?</p> <p>4 Q. 1940s.</p> <p>5 A. During the war period or are you</p> <p>6 talking -- including 1946 through 1949?</p> <p>7 Q. Let's go from 1940 to 1946.</p> <p>8 MR. BARR: Objection, calls for</p> <p>9 speculation, beyond the scope of the direct.</p> <p>10 A. Based upon the documents that I reviewed,</p> <p>11 I do not recall any commercial contracts that were</p> <p>12 performed during that period.</p> <p>13 BY MR. WINE:</p> <p>14 Q. What about from 1947 to 1949?</p> <p>15 MR. BARR: Same objections.</p> <p>16 A. I do recall that there were contracts that</p> <p>17 the contractor performed for aircraft components</p> <p>18 such as manifolds. I don't recall any</p> <p>19 differentiation between contracts for military</p> <p>20 customers and commercial customers.</p> <p>21 BY MR. WINE:</p> <p>22 Q. So, sitting here today, sir, do you know</p> <p style="text-align: right;">Page 503</p>	<p>1 BY MR. WINE:</p> <p>2 Q. Is there any period of the facility's</p> <p>3 operating history from 1938 until 1999 that you can</p> <p>4 quantify the split between a government contracting</p> <p>5 activity and other than government contracting</p> <p>6 activity, commercial activity, anything of the sort?</p> <p>7 MR. BARR: Same objections.</p> <p>8 A. For that entire 60-year period, I made no</p> <p>9 attempt to ascertain the exact split between</p> <p>10 commercial contracts and government contracts.</p> <p>11 BY MR. WINE:</p> <p>12 Q. Now, Mr. Barr asked you last week about</p> <p>13 subcontracts that Ryan performed at the site.</p> <p>14 Did you make any effort to determine</p> <p>15 which of those subcontracts were for a government</p> <p>16 end user or customer to the prime and which of them</p> <p>17 were for a commercial customer to the prime?</p> <p>18 A. I think my deposition testimony was that I</p> <p>19 saw no evidence relative to the exact nature of</p> <p>20 those subcontracts. So, I cannot answer that</p> <p>21 question.</p> <p>22 Q. Based on your experience, sir, serving as</p> <p style="text-align: right;">Page 505</p>

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<p>1 a government contracting expert with the United</p> <p>2 States for -- for over three decades, you are aware</p> <p>3 in a subcontracting context that in many instances,</p> <p>4 if not in all instances, rather consistently, primes</p> <p>5 flow down their regulatory obligations to their</p> <p>6 subs, are you not?</p> <p>7 MR. BARR: Objection, overly broad,</p> <p>8 vague and ambiguous.</p> <p>9 A. You're talking about subcontracts for</p> <p>10 government work?</p> <p>11 BY MR. WINE:</p> <p>12 Q. Yes.</p> <p>13 A. Yes, there is a flow-down requirement.</p> <p>14 Q. So, in many instances, the regulatory</p> <p>15 obligations that a prime contractor has under a</p> <p>16 government contract are flowed down and are the same</p> <p>17 obligations for the sub; isn't that correct?</p> <p>18 MR. BARR: Same objections.</p> <p>19 A. Best of my knowledge, yes.</p> <p>20 BY MR. WINE:</p> <p>21 Q. Okay. Now, I just want to be clear, sir,</p> <p>22 what you're not offering an opinion in this matter</p> <p style="text-align: right;">Page 506</p>	<p>1 opinion that the court should consider those ASPR</p> <p>2 provisions, correct, if I read your report</p> <p>3 correctly?</p> <p>4 A. Would you repeat the question, please?</p> <p>5 Q. It's your opinion in this matter that the</p> <p>6 court should consider those ASPR provisions relating</p> <p>7 to indemnification, correct, without opining on what</p> <p>8 impact those provisions have on this particular</p> <p>9 matter?</p> <p>10 A. If the court feels that it should consider</p> <p>11 those indemnification provisions, then it should</p> <p>12 consider them.</p> <p>13 Q. Are you aware of any instance, sir, in</p> <p>14 which a court has applied ASPR provisions to</p> <p>15 indemnify or hold the United States harmless from</p> <p>16 environmental remediation costs at a government</p> <p>17 contractor facility?</p> <p>18 MR. BARR: Objection, relevance,</p> <p>19 beyond the scope.</p> <p>20 A. Since I am not conversant with every piece</p> <p>21 of litigation between any segment of industry and</p> <p>22 the Federal Government relative to environmental</p> <p style="text-align: right;">Page 508</p>
<p>1 on. So, I'm going to ask you a series of questions</p> <p>2 predicated on the premise that you are not offering</p> <p>3 an opinion.</p> <p>4 So, in the first instance, you are</p> <p>5 not offering an opinion in this matter, sir, that</p> <p>6 the ASPR indemnification provisions referenced in</p> <p>7 your testimony last week with Mr. Barr preclude</p> <p>8 recovery of damages by TDY in this matter, correct?</p> <p>9 MR. BARR: Objection, calls for a</p> <p>10 legal opinion, not been offered for that.</p> <p>11 A. That is correct.</p> <p>12 BY MR. WINE:</p> <p>13 Q. Okay. And you're not expressing an</p> <p>14 opinion in this matter as to whether the chemical</p> <p>15 releases being remediated in this matter were the</p> <p>16 result of discharges from machinery in the ordinary</p> <p>17 course of their usage at the site, are you?</p> <p>18 A. Since I am not an expert on the specific</p> <p>19 uses of machinery, that is correct.</p> <p>20 Q. Now, going back to the ASPR</p> <p>21 indemnification provisions that was the subject of</p> <p>22 my prior question, you're -- you're offering the</p> <p style="text-align: right;">Page 507</p>	<p>1 issues, I don't know how I could answer that</p> <p>2 question.</p> <p>3 BY MR. WINE:</p> <p>4 Q. Have you ever seen a single case which</p> <p>5 applied the ASPRs in a manner that precluded the</p> <p>6 government from having to pay or contribute to the</p> <p>7 environmental remediation of a site for a government</p> <p>8 contractor?</p> <p>9 MR. BARR: Same objections.</p> <p>10 A. Since one of my hobbies is not reading</p> <p>11 court decisions relative to environmental issues,</p> <p>12 you're correct. I have not seen a decision by a</p> <p>13 court relative to that issue.</p> <p>14 BY MR. WINE:</p> <p>15 Q. And you certainly didn't do it in</p> <p>16 conjunction with your role as an expert in this</p> <p>17 matter?</p> <p>18 A. That is correct.</p> <p>19 Q. And I take it -- and I just want to ask --</p> <p>20 I believe you've answered it, but I want to ask the</p> <p>21 question slightly differently.</p> <p>22 You've also not seen published</p> <p style="text-align: right;">Page 509</p>

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<p>1 decisions by federal courts that expressly rejected</p> <p>2 an interpretation of the ASPR indemnification</p> <p>3 provisions where the government sought to be held</p> <p>4 harmless or released from liability at a surplus</p> <p>5 site?</p> <p>6 A. I don't recall any decision by a court</p> <p>7 relative to those issues.</p> <p>8 Q. Now, in 1993, we looked with Mr. Barr last</p> <p>9 week -- I believe it's Jordan Exhibit 71 and 72 --</p> <p>10 DCAA guidance regarding the allowability of</p> <p>11 environmental legacy costs at government contractor</p> <p>12 facilities if a contractor can show that they were</p> <p>13 reasonable, allowable and allocable.</p> <p>14 Do you remember that testimony, sir,</p> <p>15 last week?</p> <p>16 MR. BARR: Objection,</p> <p>17 mischaracterizes the record, vague and ambiguous.</p> <p>18 A. You are referring to the 93 and 95</p> <p>19 guidance documents from DCAA?</p> <p>20 BY MR. WINE:</p> <p>21 Q. Actually, I'm referring to Jordan --</p> <p>22 Jordan Exhibit 71 and 72, which are 92 and 94</p> <p style="text-align: right;">Page 510</p>	<p>1 Q. Now, do you have any understanding as an</p> <p>2 expert in this matter, sir, why the DCAA offered up</p> <p>3 this guidance regarding the ability of government</p> <p>4 contractors to recover for legacy environmental</p> <p>5 costs at their site if the ASPRs and release</p> <p>6 agreements that they had been executing for decades</p> <p>7 released and held the government harmless for these</p> <p>8 kinds of issues?</p> <p>9 MR. BARR: Objection, vague and</p> <p>10 ambiguous, calls for speculation.</p> <p>11 A. (Reviewing documents) Without reading</p> <p>12 every word of these documents, my recollection is</p> <p>13 that the basic reasons behind these guidance</p> <p>14 documents, that it was oftentimes difficult to make</p> <p>15 a determination of reasonableness. So, that's why</p> <p>16 DCAA felt the -- the need to issue this kind of</p> <p>17 guidance.</p> <p>18 BY MR. WINE:</p> <p>19 Q. Okay. But my question is slightly</p> <p>20 different.</p> <p>21 If the ASPR indemnification</p> <p>22 regulations, which had been in place for decades at</p> <p style="text-align: right;">Page 512</p>
<p>1 documents; but instead of talking about them in the</p> <p>2 abstract, I'll show you a copy of them.</p> <p>3 (Sotto voce discussion.)</p> <p>4 BY MR. WINE:</p> <p>5 Q. I'm sorry. I gave you one off. I meant</p> <p>6 to give you 71 and 73. My apologies.</p> <p>7 (Documents tendered.)</p> <p>8 BY MR. WINE:</p> <p>9 Q. There you go. For the record, I've</p> <p>10 provided you, Mr. Jordan, with exhibits that were</p> <p>11 marked by the government last week in your</p> <p>12 deposition as Jordan Exhibits 71 and 73, and I'll</p> <p>13 describe for the record what they are while you're</p> <p>14 reviewing them.</p> <p>15 Jordan Exhibit 71 is an October 14th,</p> <p>16 1992 defense contract audit agency memorandum for</p> <p>17 regional directors.</p> <p>18 And Jordan Exhibit 73 is a May 12th,</p> <p>19 1994 memorandum from the DCAA.</p> <p>20 Do you recall your testimony last</p> <p>21 week with regard to these two documents, sir?</p> <p>22 A. Yes, I do.</p> <p style="text-align: right;">Page 511</p>	<p>1 the time that these two documents were published by</p> <p>2 DCAA, operate in a manner that released and held the</p> <p>3 United States harmless for damage to property, why</p> <p>4 would DCAA in 1992 and 1994 offer guidance as to the</p> <p>5 allowability of those costs?</p> <p>6 MR. BARR: Objection, vague and</p> <p>7 ambiguous, calls for the witness to speculate.</p> <p>8 A. Since I did not participate in the</p> <p>9 discussions with DCAA prior to the issuance of these</p> <p>10 guidance documents, I can't specifically answer that</p> <p>11 question.</p> <p>12 BY MR. WINE:</p> <p>13 Q. Do you know whether the DCAA worked in</p> <p>14 conjunction with other government agencies in</p> <p>15 formulating that guidance document, sir?</p> <p>16 A. To repeat my answer to the last question,</p> <p>17 since I did not work with DCAA in the formulation of</p> <p>18 these guidance documents, I cannot answer that</p> <p>19 question.</p> <p>20 Q. Well, let's look at the first line on</p> <p>21 Paragraph 71 -- in Jordan Exhibit 71. It says, "The</p> <p>22 director of defense procurement," DDT -- "DDP,</p> <p style="text-align: right;">Page 513</p>

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<p>1 determined that environmental costs should be</p> <p>2 treated as normal business expenses."</p> <p>3 Is it your understanding, sir, based</p> <p>4 on your federal experience that the director of</p> <p>5 defense procurement is part of the DCAA?</p> <p>6 MR. BARR: Objection, vague and</p> <p>7 ambiguous.</p> <p>8 A. I'm not familiar with that specific</p> <p>9 organization and what its responsibilities were.</p> <p>10 BY MR. WINE:</p> <p>11 Q. Then turn to Jordan Exhibit 73, which</p> <p>12 indicates in the subject line that this was a joint</p> <p>13 DCMC/DCAA guidance to environmental pilot teams</p> <p>14 addressing questions raised by the teams related to</p> <p>15 the 9 -- 14 October, 1992 guidance paper on</p> <p>16 environmental costs.</p> <p>17 What entity is DCMC?</p> <p>18 A. Defense contract management command.</p> <p>19 Q. And that is not part of DCAA, is it?</p> <p>20 A. That's correct.</p> <p>21 Q. Were you part of the executives within the</p> <p>22 Air Force in 1987 that were looking at proposing</p> <p style="text-align: right;">Page 514</p>	<p>1 for environmental remediation costs in this matter,</p> <p>2 are you?</p> <p>3 A. There was specific language in those two</p> <p>4 novation agreements that you referenced -- and I</p> <p>5 think one of them was amended at least once -- where</p> <p>6 the contractor waived any claims that had existed</p> <p>7 under any of the contracts that had been executed</p> <p>8 either prior to the date of those novation</p> <p>9 agreements or those contracts that were specifically</p> <p>10 listed in the novation agreements.</p> <p>11 Q. Okay. But you understand I'm talking</p> <p>12 about release agreements as separate from or</p> <p>13 different from novation agreements?</p> <p>14 I believe you gave testimony with</p> <p>15 Mr. Barr last week regarding release agreements that</p> <p>16 were akin to close-out agreements at the end of a</p> <p>17 contract, whereby the United States and TDY would</p> <p>18 sign or execute a release. And I'm asking you</p> <p>19 whether you're offering an opinion in this matter</p> <p>20 that any of those agreements, that those -- let me</p> <p>21 state it differently.</p> <p>22 You are not offering an opinion in</p> <p style="text-align: right;">Page 516</p>
<p>1 environmental cost principles that would make</p> <p>2 compliance costs allowable but cleanup costs</p> <p>3 unallowable for government contractor operated</p> <p>4 facilities?</p> <p>5 A. No.</p> <p>6 Q. Do you know any of the people from the Air</p> <p>7 Force that were involved in that task force, sir?</p> <p>8 A. I do not.</p> <p>9 Q. Now, you're not offering -- you can put</p> <p>10 those two exhibits to the side for now, sir.</p> <p>11 You're not offering an opinion in</p> <p>12 this matter that TDY and the United States executed</p> <p>13 releases or novation agreements that preclude</p> <p>14 recovery by TDY in this matter, are you?</p> <p>15 A. As I sit here today, I do not recall</p> <p>16 anything within the body of those novation</p> <p>17 agreements that specifically alluded to any waivers</p> <p>18 of rights.</p> <p>19 Q. What about releases executed between TDY</p> <p>20 and the United States? You're not offering an</p> <p>21 opinion, sir, that TDY and the United States</p> <p>22 executed releases that preclude TDY from recovering</p> <p style="text-align: right;">Page 515</p>	<p>1 this matter that any of those agreements preclude</p> <p>2 recovery by TDY in this matter, correct?</p> <p>3 A. I'm not sure I understand your question.</p> <p>4 Q. Okay. We'll come back to it in the</p> <p>5 context of your testimony of release agreements</p> <p>6 generally, later today.</p> <p>7 You're not offering the opinion in</p> <p>8 this matter, sir, that TRA, Teledyne Ryan</p> <p>9 Aeronautical, and Ryan, as you've used those terms,</p> <p>10 are in any way substantively different terms for</p> <p>11 purposes of this litigation, are you?</p> <p>12 A. In my deposition, I probably have used</p> <p>13 those two terms interchangeable but for all intents</p> <p>14 and purposes, I think consider them the same.</p> <p>15 Q. Okay. Now, you're not offering an opinion</p> <p>16 in this matter, sir, that TDY -- let me ask it</p> <p>17 slightly differently.</p> <p>18 Are you aware of any statute or</p> <p>19 regulation that would preclude TDY from using</p> <p>20 progress payments to purchase supplies, such as</p> <p>21 cutting oils, lubricants, TCE or chromium?</p> <p>22 MR. BARR: Objection, calls for a</p> <p style="text-align: right;">Page 517</p>

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<p>1 hypothetical, speculative.</p> <p>2 A. I saw no evidence in the documents that I</p> <p>3 reviewed specifically identifying the types of items</p> <p>4 or specifically identifying the items that were</p> <p>5 procured with monies advanced to the contractor</p> <p>6 through progress payments.</p> <p>7 BY MR. WINE:</p> <p>8 Q. But I asked you a slightly different</p> <p>9 question.</p> <p>10 Regarding your experience as a</p> <p>11 government contracts expert, are you aware of any</p> <p>12 law or regulation that would preclude TDY from using</p> <p>13 progress payments that it received from the</p> <p>14 government to purchase feedstock chemicals such as</p> <p>15 cutting oils, lubricants, TCE or chromium?</p> <p>16 A. There's nothing that I'm aware of in the</p> <p>17 regulations that would specifically preclude the</p> <p>18 contractor's use of monies advanced to it through</p> <p>19 progress payments to procure those kinds of items.</p> <p>20 Q. And if I understand your testimony last</p> <p>21 week and today correctly, you're not offering the</p> <p>22 opinion that TDY didn't use its progress payments to</p> <p style="text-align: right;">Page 518</p>	<p>1 cutting oils or lubricants, would that alter your</p> <p>2 opinion, sir?</p> <p>3 MR. BARR: Objection, assumes facts</p> <p>4 not in evidence, calls for speculation.</p> <p>5 A. Not necessarily.</p> <p>6 BY MR. WINE:</p> <p>7 Q. Why not?</p> <p>8 A. It would depend on whether or not he</p> <p>9 testified that as a result of progress payments,</p> <p>10 that the government had assumed ownership of those</p> <p>11 materials.</p> <p>12 Q. Well, it's your understanding, based on</p> <p>13 your review of and work with the laws and</p> <p>14 regulations pertaining to progress payments, that if</p> <p>15 a progress payment is used to purchase equipment or</p> <p>16 material, the government takes a title interest in</p> <p>17 that purchase, correct?</p> <p>18 A. Best of my recollection, that is not what</p> <p>19 I testified last week.</p> <p>20 Q. Well, how is that different from -- from</p> <p>21 your understanding, sir?</p> <p>22 A. I think I testified last week that the</p> <p style="text-align: right;">Page 520</p>
<p>1 purchase those chemicals, simply that you haven't</p> <p>2 seen any documentation that indicates that TDY used</p> <p>3 progress payments for those purposes, correct?</p> <p>4 A. That is correct.</p> <p>5 Q. Okay. Now, you're not offering the</p> <p>6 opinion in this matter that the United States did</p> <p>7 not hold title to chemicals, such as TCE, chromium,</p> <p>8 cutting oils or lubricants at this site, are you,</p> <p>9 sir?</p> <p>10 A. As I recall my deposition last week, I</p> <p>11 stated that I saw no evidence that the government at</p> <p>12 any time owned any of the items that I generically</p> <p>13 call hazardous materials.</p> <p>14 Q. You just don't know one way or the other?</p> <p>15 A. To repeat, I saw no evidence that at any</p> <p>16 time the government or the contractor believed that</p> <p>17 the government owned those kinds of materials.</p> <p>18 Q. Now, if Arden Honrud, the former CFO of</p> <p>19 the company, were to testify at trial that the</p> <p>20 company received progress payments on its contracts</p> <p>21 and used, in part, those progress payments to</p> <p>22 purchase feedstock chemicals, such as TCE, chromium,</p> <p style="text-align: right;">Page 519</p>	<p>1 government assumed title or an interest in those</p> <p>2 things of value that it would use to protect its</p> <p>3 interest in those monies that were advanced to the</p> <p>4 contractor through progress payments.</p> <p>5 Q. And so, let's say at a batch processing</p> <p>6 facility, such as the Ryan plant, where chrome</p> <p>7 plating operations are taking place in support of</p> <p>8 government contracts, the chromic acid or other</p> <p>9 chromium derivatives that are used for that process,</p> <p>10 that has a value for the United States, doesn't it,</p> <p>11 insofar as it's contracting with that company to</p> <p>12 perform plating operations at its specification,</p> <p>13 correct?</p> <p>14 MR. BARR: Objection, contrary to</p> <p>15 the -- mischaracterizes the record.</p> <p>16 A. It has no value as a spent chemical.</p> <p>17 BY MR. WINE:</p> <p>18 Q. What about the chemical that hasn't been</p> <p>19 used that's sitting in that tank waiting to plate</p> <p>20 metal that needs to be processed?</p> <p>21 A. As I recall my testimony last week, I saw</p> <p>22 no evidence that the contractor had segregated its</p> <p style="text-align: right;">Page 521</p>

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<p>1 facilities relative to use for commercial products</p> <p>2 or government contracts.</p> <p>3 And to the best of my recollection, I</p> <p>4 saw no evidence that the contractor had separate</p> <p>5 plating facilities, if you will, used exclusively on</p> <p>6 government contracts.</p> <p>7 Q. Can you point me to any DCAA guidance or</p> <p>8 regulation that requires segregation of processes in</p> <p>9 a batch processing facility in order for certain</p> <p>10 materials to be recoverable under progress payments?</p> <p>11 In other words, where was Ryan required to segregate</p> <p>12 its operations in a manner consistent with the</p> <p>13 testimony you just gave, sir?</p> <p>14 MR. BARR: Objection, vague and</p> <p>15 ambiguous.</p> <p>16 A. I do recall seeing documentation that the</p> <p>17 contractor was required to segregate material that</p> <p>18 it had received progress payments on from other</p> <p>19 material, and I specifically recall one DCAA audit</p> <p>20 where the contractor was criticized because it had</p> <p>21 not properly maintained that kind of segregation.</p> <p>22</p> <p style="text-align: right;">Page 522</p>	<p>1 that it had advanced to the contractor. If the</p> <p>2 contractor were to subsequently default on</p> <p>3 performance and the government had to somehow recoup</p> <p>4 its -- its monies through the default procedures,</p> <p>5 yes, it would have to segregate the material.</p> <p>6 BY MR. WINE:</p> <p>7 Q. Is that the only benefit the government</p> <p>8 derived from the title vesting clauses of the</p> <p>9 applicable regulations and contract provisions, sir?</p> <p>10 A. Best of my knowledge, yes.</p> <p>11 Q. Isn't it also, true, sir, that if a</p> <p>12 contractor is performing a critical need for the</p> <p>13 government, say a DX-rated contract, and the</p> <p>14 government's critical need for that end item</p> <p>15 continues but the contractor becomes insolvent, the</p> <p>16 government can use the title vesting provisions to</p> <p>17 take whatever steps it needs to make sure that its</p> <p>18 critical needs are met, including the use of any of</p> <p>19 the materials that were acquired at that facility</p> <p>20 via progress payments?</p> <p>21 MR. BARR: Objection, assumes facts</p> <p>22 not in evidence, vague and ambiguous, calls for --</p> <p style="text-align: right;">Page 524</p>
<p>1 BY MR. WINE:</p> <p>2 Q. Was that Ryan?</p> <p>3 A. At Ryan's, yes.</p> <p>4 Q. Okay. And what if Ryan received progress</p> <p>5 payments and used them for chemical feedstocks that</p> <p>6 I've described during a period in which it was</p> <p>7 exclusively performing government contracts? Would</p> <p>8 such segregation still be required, sir?</p> <p>9 MR. BARR: Objection, calls for</p> <p>10 speculation, vague and ambiguous.</p> <p>11 A. If they wanted to claim that the</p> <p>12 government had assumed title to that material, yes.</p> <p>13 BY MR. WINE:</p> <p>14 Q. That ability to assume title or hold title</p> <p>15 to items purchased using progress payments serves</p> <p>16 the government's benefit as well, doesn't it, sir?</p> <p>17 MR. BARR: Objection, vague and</p> <p>18 ambiguous.</p> <p>19 A. The -- the reason for taking a title or a</p> <p>20 lien against those materials covered by progress</p> <p>21 payments was intended solely for the purpose of</p> <p>22 protecting the government's interest in the monies</p> <p style="text-align: right;">Page 523</p>	<p>1 it's a hypothetical, speculative, compound.</p> <p>2 A. Possibly in theory, but not in practical</p> <p>3 application.</p> <p>4 BY MR. WINE:</p> <p>5 Q. You never heard of that happening during</p> <p>6 the World War II period, sir?</p> <p>7 A. That is correct.</p> <p>8 Q. Okay. You're not offering the opinion in</p> <p>9 this matter, sir, that TDY did not recover</p> <p>10 environmental remediation costs in the 1980s and</p> <p>11 '90s by burdening its overhead pursuant to</p> <p>12 applicable cost accounting standards, correct?</p> <p>13 A. I am aware of deposition testimony by</p> <p>14 prior contractor executives that they had included</p> <p>15 those costs in their overhead submissions. I think</p> <p>16 I made a statement that I had seen no documentation,</p> <p>17 no evidence as to the precise amount of those costs</p> <p>18 that had been, in fact, paid by the government in --</p> <p>19 to the contractor during the relevant period.</p> <p>20 Q. Are you aware that -- that Ryan was</p> <p>21 burdening its overhead rates as early as the 1980s</p> <p>22 for such costs, sir?</p> <p style="text-align: right;">Page 525</p>

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<p>1 A. I also recall --</p> <p>2 Q. Were you aware of that, sir?</p> <p>3 MR. BARR: Objection, vague and</p> <p>4 ambiguous.</p> <p>5 A. I am aware that they were burdening their</p> <p>6 overhead with various aspects of costs, including</p> <p>7 environmental costs.</p> <p>8 BY MR. WINE:</p> <p>9 Q. Do you know the percentage breakdown</p> <p>10 between cost-based contracts and fixed-price</p> <p>11 contracts that Ryan was performing in the 1980s?</p> <p>12 A. I saw no documentation relative to that</p> <p>13 kind of breakout.</p> <p>14 Q. Do you know what the breakdown between</p> <p>15 cost-based and fixed-price contracts Ryan was</p> <p>16 performing from 1990 until 1995?</p> <p>17 A. I saw no documentation relative to that</p> <p>18 kind of breakout.</p> <p>19 Q. Okay. You're not offering an opinion in</p> <p>20 this matter, sir, that the United States has never</p> <p>21 been found to have hold -- held title to chemicals</p> <p>22 at a site, the release of which gave rise to</p> <p style="text-align: right;">Page 526</p>	<p>1 cost accounting standards, correct?</p> <p>2 A. Specifically speaking to CERCLA?</p> <p>3 Q. To CERCLA.</p> <p>4 MR. BARR: Same objections.</p> <p>5 A. I have seen no evidence that CERCLA costs</p> <p>6 were considered to be either allowable or</p> <p>7 unallowable by DCAA.</p> <p>8 BY MR. WINE:</p> <p>9 Q. Okay. And you're not offering an opinion,</p> <p>10 sir, that the costs that TDY has -- has -- is</p> <p>11 seeking contribution from the United States from --</p> <p>12 for in this litigation post-dating the Convair</p> <p>13 lagoon cleanup are unreasonable applying cost</p> <p>14 accounting standards, are you?</p> <p>15 MR. BARR: Objection. Same</p> <p>16 objections.</p> <p>17 A. I do not recall seeing any documentation,</p> <p>18 any evidence that speaks to that issue.</p> <p>19 BY MR. WINE:</p> <p>20 Q. Okay. You're not offering an opinion in</p> <p>21 this matter, sir, whether the government should or</p> <p>22 should not be considered an operator or a ranger</p> <p style="text-align: right;">Page 528</p>
<p>1 environmental remediation costs for which the United</p> <p>2 States was held liable, correct?</p> <p>3 MR. BARR: Objection, beyond the</p> <p>4 scope of the direct, calls for a legal opinion.</p> <p>5 A. I'm not personally aware of any situation</p> <p>6 in which the government assumed ownership to those</p> <p>7 kinds of chemicals at any contractor's facility.</p> <p>8 BY MR. WINE:</p> <p>9 Q. And likewise, I take it, sir, that you're</p> <p>10 not familiar with any case law that has found that</p> <p>11 the title vesting clauses of contracts or</p> <p>12 regulations gave rise to government liability</p> <p>13 pursuant to CERCLA -- CERCLA for the release of</p> <p>14 chemicals at a site and resultant environmental</p> <p>15 remediation costs?</p> <p>16 MR. BARR: Same objections.</p> <p>17 A. I never claim that I am an expert on</p> <p>18 CERCLA.</p> <p>19 BY MR. WINE:</p> <p>20 Q. Okay. You're not offering any opinion in</p> <p>21 this matter, sir, that the costs incurred by TDY in</p> <p>22 this case are unallowable pursuant to applicable</p> <p style="text-align: right;">Page 527</p>	<p>1 pursuant to CERCLA, correct?</p> <p>2 MR. BARR: Same objections.</p> <p>3 A. To repeat, I am not an expert on CERCLA.</p> <p>4 BY MR. WINE:</p> <p>5 Q. Are you familiar with or have an</p> <p>6 understanding of what -- how CERCLA defines operator</p> <p>7 as a potentially responsible party pursuant to that</p> <p>8 statute?</p> <p>9 MR. BARR: Same objections; beyond</p> <p>10 the scope of the direct.</p> <p>11 A. I am not an expert on CERCLA. So, I can't</p> <p>12 answer that question.</p> <p>13 BY MR. WINE:</p> <p>14 Q. I'm just asking if you have familiarity</p> <p>15 with how CERCLA uses the term "operator."</p> <p>16 MR. BARR: Same objections.</p> <p>17 A. I am not familiar with CERCLA or how they</p> <p>18 use terms.</p> <p>19 BY MR. WINE:</p> <p>20 Q. Okay. Have -- have you ever reviewed the</p> <p>21 CERCLA statute, sir?</p> <p>22 A. To the best of my knowledge, no.</p> <p style="text-align: right;">Page 529</p>

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<p>1 Q. And the two matters in which the</p> <p>2 government has sought or has -- has actually</p> <p>3 qualified you as an expert to offer expert opinion</p> <p>4 testimony have been CERCLA matters, correct?</p> <p>5 A. I can't answer that question since I</p> <p>6 don't -- I don't know CERCLA.</p> <p>7 Q. Now, during the course of your testimony</p> <p>8 last week, sir, Mr. Barr asked you for a number of</p> <p>9 topics, whether you had found any evidence to</p> <p>10 support certain propositions that he specified.</p> <p>11 Do you recall generally that series</p> <p>12 of questions he asked you?</p> <p>13 A. Generally, yes.</p> <p>14 Q. Okay. And I believe you stated at the</p> <p>15 beginning of today's testimony that you've not</p> <p>16 reviewed all of the evidence in this matter,</p> <p>17 correct?</p> <p>18 A. I stated that I had not reviewed all the</p> <p>19 documents related to this particular contractor</p> <p>20 operating at this -- this location, that's correct.</p> <p>21 Q. Well, let me drill down a little more</p> <p>22 specifically.</p> <p style="text-align: right;">Page 530</p>	<p>1 A. Since I don't know every deposition that</p> <p>2 was given in this case, I can't tell you whether I</p> <p>3 reviewed every one of them or not. I reviewed a</p> <p>4 number of them.</p> <p>5 Q. Okay. And so, for the series of questions</p> <p>6 that Mr. Barr asked you for which you answered you</p> <p>7 saw no evidence or you found no facts, it's</p> <p>8 possible, sir, that there's evidence for those</p> <p>9 propositions; but you just haven't seen it, correct?</p> <p>10 MR. BARR: Objection, calls for</p> <p>11 speculation by the witness.</p> <p>12 A. If you could show me specific documents</p> <p>13 that speak to these issues that I have not reviewed,</p> <p>14 I'd be happy to look at them.</p> <p>15 BY MR. WINE:</p> <p>16 Q. Okay. And if -- if TDY presents evidence</p> <p>17 on -- on any of these topics at trial, provides</p> <p>18 evidence to Judge Houston, that would invalidate</p> <p>19 your opinions to the extent that you say you saw no</p> <p>20 evidence or you had found no facts, correct?</p> <p>21 MR. BARR: Objection, calls for a</p> <p>22 legal opinion, calls for speculation, vague and</p> <p style="text-align: right;">Page 532</p>
<p>1 You also haven't reviewed all of the</p> <p>2 documents exchanged in this litigation between these</p> <p>3 two parties, correct?</p> <p>4 A. That is correct.</p> <p>5 Q. You've not reviewed all the expert reports</p> <p>6 authored by either TDY's witnesses or the</p> <p>7 government's witnesses, correct?</p> <p>8 MR. BARR: Objection, assumes facts</p> <p>9 not in evidence, relevance.</p> <p>10 A. I reviewed those expert reports that I was</p> <p>11 aware of.</p> <p>12 BY MR. WINE:</p> <p>13 Q. Okay. How many expert reports have you</p> <p>14 reviewed, sir?</p> <p>15 A. I don't recall precisely. Three or four.</p> <p>16 Q. Did you ever ask the government to provide</p> <p>17 you with copies of every expert report authored in</p> <p>18 this matter?</p> <p>19 A. I did not specifically ask for every</p> <p>20 expert report, no, sir.</p> <p>21 Q. Have you reviewed every deposition that</p> <p>22 was given in this case, sir?</p> <p style="text-align: right;">Page 531</p>	<p>1 ambiguous, argumentative.</p> <p>2 A. I have seen nothing to date that would</p> <p>3 cause me to change my opinion. If there is evidence</p> <p>4 or testimony at trial that is contrary to the</p> <p>5 opinions that I have expressed, then I'm sure the</p> <p>6 judge will take that into consideration.</p> <p>7 BY MR. WINE:</p> <p>8 Q. Okay. Now, I want to return to a subject</p> <p>9 that we talked about briefly and that you spoke with</p> <p>10 Mr. Barr on Monday about; and those were releases of</p> <p>11 claims, contract clauses that were contained -- that</p> <p>12 were contained in a number of the contracts you were</p> <p>13 familiar with that related to the close-out of a</p> <p>14 contract.</p> <p>15 Do you remember that subject matter,</p> <p>16 sir?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Now, you were showed one of those</p> <p>19 releases; and I believe it was Exhibit 19 of your</p> <p>20 testimony last Monday. Let me go ahead and get you</p> <p>21 a copy of that so you can take a look at it.</p> <p>22 MR. BARR: I will object to this</p> <p style="text-align: right;">Page 533</p>

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<p>1 question as mischaracterizing the record.</p> <p>2 BY MR. WINE:</p> <p>3 Q. Mr. Jordan, I've handed you what's been</p> <p>4 marked last week by the government as Government</p> <p>5 Exhibit 19 for purposes of your testimonial</p> <p>6 deposition; and we'll describe it briefly for the</p> <p>7 record.</p> <p>8 It is a Navy department Bureau of</p> <p>9 Aeronautics settlement agreement produced by Ryan in</p> <p>10 this matter Bates labeled TDY Ryan 20034015 through</p> <p>11 4024.</p> <p>12 Do you recall testifying about this</p> <p>13 document last week, sir?</p> <p>14 A. I believe I did.</p> <p>15 Q. Okay. Now, if you'd turn to -- hold on</p> <p>16 one second.</p> <p>17 MR. WINE: Off the record.</p> <p>18 THE VIDEOGRAPHER: Going off record.</p> <p>19 Time now is 11:35.</p> <p>20 (Recess from 11:35 a.m. to 11:40</p> <p>21 a.m.)</p> <p>22 THE VIDEOGRAPHER: Going back on</p> <p style="text-align: right;">Page 534</p>	<p>1 anything other than generally why you reviewed those</p> <p>2 four documents in the preparation of your expert</p> <p>3 report.</p> <p>4 A. Because these -- to the best of my</p> <p>5 recollection, these were all facilities contracts.</p> <p>6 We know that there were other facilities contracts</p> <p>7 awarded by the government to Ryan other than the --</p> <p>8 the one I think that we could -- could locate.</p> <p>9 And by reviewing contracts for</p> <p>10 facilities awarded to other contracts, it</p> <p>11 demonstrated that the consistency of the application</p> <p>12 of regulations throughout facilities contracts to</p> <p>13 the government was the same.</p> <p>14 Q. Can I see that stack of exhibits, sir?</p> <p>15 Now, you reviewed one of these</p> <p>16 contracts. I'll tell you specifically which one.</p> <p>17 It's actually No. 34 at the top, the North American</p> <p>18 Aviation Rocketdyne Division contract, correct?</p> <p>19 A. That is correct.</p> <p>20 Q. Do you have any familiarity, sir, with the</p> <p>21 ongoing environmental cleanup at the Rocketdyne site</p> <p>22 for which the Department of Energy and NASA are</p> <p style="text-align: right;">Page 536</p>
<p>1 record. Time now is 11:40.</p> <p>2 BY MR. WINE:</p> <p>3 Q. All right. Mr. Jordan, there's a little</p> <p>4 bit of a mix-up as to specific documentation on</p> <p>5 facilities release agreements. So, I'm going to</p> <p>6 come back to that.</p> <p>7 What I'd like to ask you about is the</p> <p>8 series of contracts that Mr. Barr showed you last</p> <p>9 week relating to prime contracts between the United</p> <p>10 States and other government contractors. Do you</p> <p>11 remember him asking questions to that regard?</p> <p>12 A. Yes, I do.</p> <p>13 Q. I'm going to show you exhibits that he</p> <p>14 marked as Exhibit 34, 35, 36 and 37. Just ask you</p> <p>15 to look at those briefly.</p> <p>16 A. (Reviewing documents)</p> <p>17 MR. BARR: Object to the question as</p> <p>18 mischaracterizing the contracts.</p> <p>19 A. (Reviewing documents)</p> <p>20 BY MR. WINE:</p> <p>21 Q. You're more than welcome, Mr. Jordan, to</p> <p>22 review each of those. I'm not going to ask you</p> <p style="text-align: right;">Page 535</p>	<p>1 taking exclusive responsibility?</p> <p>2 MR. BARR: Objection, beyond the</p> <p>3 scope, relevance.</p> <p>4 A. I do not know.</p> <p>5 BY MR. WINE:</p> <p>6 Q. Do you know if any of the other</p> <p>7 contractors identified in those exhibits are</p> <p>8 currently engaged in cleanup for which the United</p> <p>9 States is contributing?</p> <p>10 MR. BARR: Same objections.</p> <p>11 A. I do not know.</p> <p>12 BY MR. WINE:</p> <p>13 Q. Do you know if the United States, either</p> <p>14 through advance agreement or through the payment of</p> <p>15 overhead costs, has contributed to the cleanup of</p> <p>16 the General Dynamics site adjacent to the Ryan site</p> <p>17 in San Diego?</p> <p>18 MR. BARR: Same objections.</p> <p>19 A. I do not know.</p> <p>20 BY MR. WINE:</p> <p>21 Q. Now, when Mr. Barr was asking you about</p> <p>22 the advance agreement, you stated in your testimony</p> <p style="text-align: right;">Page 537</p>

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<p>1 that you know of nothing in regulation that gives</p> <p>2 any government employee, such as administrative</p> <p>3 contracting officers, DCAA auditors, the authority</p> <p>4 to waive provisions in prior contracts, such as --</p> <p>5 such as that existed earlier in the period prior to</p> <p>6 the -- this period that you were talking about in</p> <p>7 the 1980s and '90s. There's simply no authority for</p> <p>8 them to waive those privileges.</p> <p>9 My question to you, sir, is: If the</p> <p>10 government wasn't contractually -- was contractually</p> <p>11 released from paying for environmental costs</p> <p>12 associated with Ryan's activities, why did they</p> <p>13 enter into the advance agreement?</p> <p>14 MR. BARR: Objection, calls for</p> <p>15 speculation, vague and ambiguous, argumentative,</p> <p>16 calls for a legal opinion.</p> <p>17 A. Would you repeat the question, please?</p> <p>18 BY MR. WINE:</p> <p>19 Q. My question is: Why did the United States</p> <p>20 enter into the advance agreement with TDY if it was</p> <p>21 released and held harmless from paying such claims</p> <p>22 pursuant to contract and regulation?</p> <p style="text-align: right;">Page 538</p>	<p>1 senior government procurement official, permit the</p> <p>2 recovery of environmental costs by a government</p> <p>3 contractor?</p> <p>4 MR. BARR: Objection, vague and</p> <p>5 ambiguous, incomplete hypothetical, calls for</p> <p>6 speculation.</p> <p>7 A. To the best of my recollection, the issue</p> <p>8 of recovery of environmental costs did not come up</p> <p>9 on any of the contracts which I was an -- a</p> <p>10 contracting executive.</p> <p>11 BY MR. WINE:</p> <p>12 Q. So, when it comes to supplying government</p> <p>13 contract principles to the recovery of environmental</p> <p>14 costs, you have no work experience in that area,</p> <p>15 correct?</p> <p>16 A. That is correct.</p> <p>17 Q. And you understand that TDY is not</p> <p>18 asserting a breach of contract cause of action in</p> <p>19 this matter, are you not, sir?</p> <p>20 MR. BARR: Objection, calls for a</p> <p>21 legal opinion, vague and ambiguous.</p> <p>22 A. The only breach of contract issue that I'm</p> <p style="text-align: right;">Page 540</p>
<p>1 MR. BARR: Same objections; also</p> <p>2 assumes facts not in evidence.</p> <p>3 A. The settlement and advance agreement was</p> <p>4 predicated upon the guidance that had been issued by</p> <p>5 DCAA; and as you indicated a while ago, it was a</p> <p>6 joint DCMA/DCAA decision relative to the guidance.</p> <p>7 I don't know all of the thought</p> <p>8 processes that went into the preparation of that</p> <p>9 guidance document or whether or not the people who</p> <p>10 promulgated this guidance was aware of the prior</p> <p>11 releases that had been executed by this contractor</p> <p>12 on -- at this site.</p> <p>13 BY MR. WINE:</p> <p>14 Q. Now, sir, during your tenure as a federal</p> <p>15 employee and as a contracting officer, did you ever</p> <p>16 apply the ASPR or contractual indemnification</p> <p>17 provisions to preclude the recovery of environmental</p> <p>18 cleanup costs by a government contractor?</p> <p>19 A. To preclude the recovery?</p> <p>20 Q. Yes.</p> <p>21 A. Not to my recollection.</p> <p>22 Q. Did you ever, as a contracting officer or</p> <p style="text-align: right;">Page 539</p>	<p>1 aware of is between TDY and the prime contractor on</p> <p>2 Apache helicopter.</p> <p>3 BY MR. WINE:</p> <p>4 Q. Nothing between the United States and TDY?</p> <p>5 A. That is correct.</p> <p>6 Q. Now, when the government and government</p> <p>7 contractors entered into these release agreements or</p> <p>8 indemnification clauses going back prior to World</p> <p>9 War II but certainly up through the 1940s, '50s,</p> <p>10 '60s and '70s, they weren't aware of CERCLA at that</p> <p>11 time, were they, sir?</p> <p>12 MR. BARR: Objection, assumes facts</p> <p>13 not in evidence, vague and ambiguous, argumentative,</p> <p>14 relevance.</p> <p>15 A. As I indicated a while ago, I am not an</p> <p>16 expert on CERCLA. So, I can't tell you precisely</p> <p>17 when CERCLA became the law.</p> <p>18 BY MR. WINE:</p> <p>19 Q. I believe it was your testimony last week,</p> <p>20 though, that environmental compliance wasn't even in</p> <p>21 the national conscience until the late 1970s.</p> <p>22 MR. BARR: Objection, misstates the</p> <p style="text-align: right;">Page 541</p>

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<p>1 record.</p> <p>2 A. I don't recall the exact language. I</p> <p>3 testified a while ago that prior to -- I believe it</p> <p>4 was 1990 -- or 1975, there was no requirement in</p> <p>5 ASPR to include any provisions related to</p> <p>6 environmental issues.</p> <p>7 BY MR. WINE:</p> <p>8 Q. Okay. Now, sir, one of the documents that</p> <p>9 Mr. Barr showed you last week was a release</p> <p>10 agreement that was produced by TDY in this matter.</p> <p>11 I'm going to hand it to you. It was marked as</p> <p>12 Exhibit 20 in this litigation. And while you're</p> <p>13 reviewing it, I'll describe it for the record.</p> <p>14 It says, "Contractor's Release Under</p> <p>15 Contract No." -- or "Nos. 314." It is signed by a</p> <p>16 C.A. Stillwagen -- I believe that's the name --</p> <p>17 secretary for The Ryan Aeronautical Company, and it</p> <p>18 bears the Bates label TDYRYAN20034628.</p> <p>19 Do you recall testifying about this</p> <p>20 last week, sir?</p> <p>21 A. Yes, I do.</p> <p>22 Q. And what was the purpose of your testimony</p> <p style="text-align: right;">Page 542</p>	<p>1 Q. I'd like you to read with me toward the</p> <p>2 bottom of that paragraph. One, two, three, four,</p> <p>3 five -- six lines from the bottom of the</p> <p>4 paragraph after the word "contract" with a</p> <p>5 semicolon; and I'll read it for the record while</p> <p>6 you're reviewing it.</p> <p>7 "Provided that this agreement</p> <p>8 expressly excepts from this release without</p> <p>9 prejudice to the rights of either party under the</p> <p>10 above-mentioned contract all claims not known to the</p> <p>11 Contractor and hereafter presented or made against</p> <p>12 the Contractor on any subcontract claim or claim of</p> <p>13 any third person, of whatsoever kind or nature and</p> <p>14 for which the Contractor's liable under the</p> <p>15 aforesaid contract."</p> <p>16 Now, sir, this was dated</p> <p>17 February 21st, 1946. Do you see that?</p> <p>18 A. Yes, I do.</p> <p>19 Q. Do you have any reason sitting here today</p> <p>20 to believe that Ryan was aware in February of 1946</p> <p>21 of the possibility of CERCLA liability that would be</p> <p>22 assessed against it in the 1990s, 2000s and still to</p> <p style="text-align: right;">Page 544</p>
<p>1 or your consideration of this document in</p> <p>2 formulating your expert opinions, sir?</p> <p>3 MR. BARR: Objection, vague and</p> <p>4 ambiguous.</p> <p>5 A. This was one of the -- as you indicated a</p> <p>6 while ago, a close-out release that had been</p> <p>7 executed at the time of contract completion.</p> <p>8 BY MR. WINE:</p> <p>9 Q. And I think it was your testimony -- but I</p> <p>10 don't want to misstate it. So, I'll give you the</p> <p>11 opportunity to correct me if I'm wrong, but I think</p> <p>12 it was your -- it was your testimony that close-out</p> <p>13 agreements like this were pretty standard, that you</p> <p>14 can extrapolate that there were other agreements</p> <p>15 like this one by virtue of the fact that they were</p> <p>16 pretty consistent over time for an extended period;</p> <p>17 is that correct?</p> <p>18 A. That was my deposition -- deposition</p> <p>19 testimony, yes.</p> <p>20 Q. And that's still your testimony today,</p> <p>21 sir?</p> <p>22 A. Yes, it is.</p> <p style="text-align: right;">Page 543</p>	<p>1 this date?</p> <p>2 A. The release says what it says, since I</p> <p>3 testified a few minutes ago that I wasn't aware of</p> <p>4 the CERCLA and I don't know what Ryan was aware of</p> <p>5 or should have been aware of in 1946 relative to</p> <p>6 future liabilities.</p> <p>7 Q. When did you first become aware of</p> <p>8 environmental issues and the need to remediate</p> <p>9 environmental hazards at manufacturing sites, sir?</p> <p>10 A. I think my testimony a few minutes ago was</p> <p>11 that prior to, I believe it was, 1975, we had no</p> <p>12 requirement in our regulations relative to any</p> <p>13 environmental issues. So, prior to that date, I had</p> <p>14 no cognizance of environmental issues.</p> <p>15 Q. So, then, sir, it's -- it's fair to</p> <p>16 extrapolate, based on how you used Jordan Exhibit 20</p> <p>17 in the consideration and formulation of your expert</p> <p>18 opinions, that close-out agreements or releases like</p> <p>19 this one contain the same provision that I just read</p> <p>20 to you?</p> <p>21 MR. BARR: Objection,</p> <p>22 mischaracterizes the witness' testimony. He</p> <p style="text-align: right;">Page 545</p>

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<p>1 referred to many other documents and ASPR</p> <p>2 provisions.</p> <p>3 A. I didn't say it was exactly the same. I</p> <p>4 said it was consistent.</p> <p>5 BY MR. WINE:</p> <p>6 Q. And if the government or Ryan removed that</p> <p>7 clause, it would be substantially inconsistent,</p> <p>8 correct?</p> <p>9 MR. BARR: Objection, argumentative,</p> <p>10 confusing.</p> <p>11 A. If it was changed substantially, then it</p> <p>12 would be inconsistent. So, if you will show me</p> <p>13 releases that are substantially different from this,</p> <p>14 then I will review those releases.</p> <p>15 BY MR. WINE:</p> <p>16 Q. But your testimony last week was that it</p> <p>17 was fair to extrapolate that this Exhibit 20 fairly</p> <p>18 represented and would have consistently been applied</p> <p>19 to every close-out of every contract performed by</p> <p>20 Ryan at this site, correct?</p> <p>21 MR. BARR: Objection, misstates the</p> <p>22 witness' testimony.</p> <p style="text-align: right;">Page 546</p>	<p>1 TCE for degreasing operations, cutting oils or</p> <p>2 lubricants that are on the site but that haven't</p> <p>3 been used yet, whether those chemicals have value</p> <p>4 from a government perspective with respect to</p> <p>5 progress payments or title vesting clauses.</p> <p>6 MR. BARR: Objection, vague and</p> <p>7 ambiguous, compound, confusing, hypothetical.</p> <p>8 A. If I recall Mr. Ianucci's deposition, he</p> <p>9 said when they needed to recharge the vats, they</p> <p>10 went to their chemical stores and withdrew</p> <p>11 chemicals.</p> <p>12 And so, I interpreted that statement</p> <p>13 to mean that they retained ownership of those</p> <p>14 chemicals prior to their introduction into the --</p> <p>15 the plating vats or cleaning vats.</p> <p>16 BY MR. WINE:</p> <p>17 Q. And if Ryan used progress payments from</p> <p>18 the government to either purchase chemicals to put</p> <p>19 in their stores, their inventory, or to put directly</p> <p>20 into the machines themselves, would the government</p> <p>21 own title to the chemicals when they were placed in</p> <p>22 the machine and used for purposes of performing a</p> <p style="text-align: right;">Page 548</p>
<p>1 A. In form and substance, yes, it was</p> <p>2 consistent.</p> <p>3 BY MR. WINE:</p> <p>4 Q. Okay. Now, you stated the opinion last</p> <p>5 Monday that any evidence that -- that you had not</p> <p>6 seen any evidence that any of -- hold on. Let me</p> <p>7 see how I can formulate this more clearly.</p> <p>8 MR. WINE: Why don't we -- why don't</p> <p>9 we take a brief break.</p> <p>10 THE VIDEOGRAPHER: Going off record.</p> <p>11 Time now is 11:55.</p> <p>12 (Recess from 11:55 a.m. to 12:55</p> <p>13 p.m.)</p> <p>14 THE VIDEOGRAPHER: Going back on</p> <p>15 record. Time now is 12:55.</p> <p>16 BY MR. WINE:</p> <p>17 Q. Mr. Jordan, I want to revisit a question I</p> <p>18 asked you before our last break. Make sure I get a</p> <p>19 clear answer for the record.</p> <p>20 The question was whether or not</p> <p>21 chemicals being used at the facility for batch</p> <p>22 processing, chromium for chrome-plating operations,</p> <p style="text-align: right;">Page 547</p>	<p>1 government contract?</p> <p>2 MR. BARR: Objection, assumes facts</p> <p>3 not in evidence, hypothetical, vague and ambiguous.</p> <p>4 A. I saw no evidence in the record, the</p> <p>5 documents that I reviewed, that indicated they had</p> <p>6 used progress payment monies to procure those kinds</p> <p>7 of items.</p> <p>8 BY MR. WINE:</p> <p>9 Q. And if Ryan did -- regardless of what you</p> <p>10 concluded from your review of the documentary</p> <p>11 evidence, if a Ryan witness responsible for</p> <p>12 accounting issues with the government for requesting</p> <p>13 progress payments from the government states that</p> <p>14 the -- that they requested progress payments and</p> <p>15 utilized those payments to purchase feedstock</p> <p>16 chemicals, what would your answer be, sir?</p> <p>17 MR. BARR: Objection -- same</p> <p>18 objections.</p> <p>19 A. I think I'd have to review the specific</p> <p>20 documents before I made a judgment decision. I</p> <p>21 would prefer not to respond to a hypothetical issue.</p> <p>22</p> <p style="text-align: right;">Page 549</p>

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<p>1 BY MR. WINE:</p> <p>2 Q. You understand as an expert witness you're</p> <p>3 capable of giving hypotheticals and that, in fact,</p> <p>4 the Federal Rules of Evidence permit me to ask you</p> <p>5 hypothetical questions?</p> <p>6 MR. BARR: Proper hypotheticals.</p> <p>7 Objection.</p> <p>8 A. I am not familiar with the Rules of</p> <p>9 Evidence of which you speak; but again, if you show</p> <p>10 me the specific document that indicates that they</p> <p>11 used those kinds of progress payment monies to</p> <p>12 procure those kinds of items, then I will give you</p> <p>13 an opinion.</p> <p>14 BY MR. WINE:</p> <p>15 Q. And let's assume -- and we've all sat</p> <p>16 around this table and have recognized that because</p> <p>17 of the time frames involved and document retention</p> <p>18 policies and things like that, that the documentary</p> <p>19 record in this case is necessary -- necessarily</p> <p>20 incomplete.</p> <p>21 Judge Houston's commented on it as</p> <p>22 well; but let's suppose in open court, giving sworn</p> <p style="text-align: right;">Page 550</p>	<p>1 A. I prefer not to speculate. Again, I'd</p> <p>2 have to listen to the -- the complete testimony in</p> <p>3 the context from which it was given.</p> <p>4 BY MR. WINE:</p> <p>5 Q. Other than the -- the premise, the</p> <p>6 hypothetical that I've given you, sir, what other</p> <p>7 information do you need --</p> <p>8 MR. BARR: Same objection.</p> <p>9 BY MR. WINE:</p> <p>10 Q. -- to answer my question?</p> <p>11 MR. BARR: Impossible to answer.</p> <p>12 Objection.</p> <p>13 A. I don't know how to answer that question,</p> <p>14 sir.</p> <p>15 BY MR. WINE:</p> <p>16 Q. Okay. Let's step back to the first</p> <p>17 element of the question that I asked you before and</p> <p>18 I'm still not sure I've gotten an answer to and that</p> <p>19 is whether the chemicals before they're used in a</p> <p>20 machine -- let's take TCE in a degreaser -- whether</p> <p>21 the chemicals have value.</p> <p>22 MR. BARR: Objection, vague and</p> <p style="text-align: right;">Page 552</p>
<p>1 testimony, Arden Honrud, for example, states that he</p> <p>2 was specifically responsible for requesting progress</p> <p>3 payments and designating those progress payments'</p> <p>4 use throughout the facility and that one of the uses</p> <p>5 was to purchase feedstock chemicals.</p> <p>6 What would be your view as to the</p> <p>7 government's ownership of those chemicals when used</p> <p>8 to fulfill a government contract.</p> <p>9 MR. BARR: Same objections.</p> <p>10 A. I don't know -- know if I will be given an</p> <p>11 opportunity to express my opinion subsequent to</p> <p>12 sworn testimony in court.</p> <p>13 If I do have that kind of opinion,</p> <p>14 I'd have to listen to the testimony and then give</p> <p>15 you an appropriate opinion at the time.</p> <p>16 BY MR. WINE:</p> <p>17 Q. And I'm asking for the hypothetical now.</p> <p>18 If that testimony is offered, would that testimony</p> <p>19 alter your opinions in any way?</p> <p>20 MR. BARR: Objection, calls for</p> <p>21 speculation, improper hypothetical, vague and</p> <p>22 ambiguous.</p> <p style="text-align: right;">Page 551</p>	<p>1 ambiguous. Value to whom?</p> <p>2 A. If you can demonstrate that progress</p> <p>3 payment monies were used to procure those kinds of</p> <p>4 items and the government was trying to protect its</p> <p>5 interest in that -- monies that they advanced to the</p> <p>6 contractor through progress payments, then they may</p> <p>7 theoretically have value if you can be -- it can be</p> <p>8 demonstrated that the government had title to that</p> <p>9 kind of material.</p> <p>10 BY MR. WINE:</p> <p>11 Q. And you're aware, I believe if I</p> <p>12 understand your prior testimony, sir, that</p> <p>13 particularly in the World War II period, TCE was a</p> <p>14 critical -- that TCE was in critical demand in</p> <p>15 the -- in the United States, correct?</p> <p>16 A. I did not testify to that.</p> <p>17 Q. Okay. Do you have an understanding that</p> <p>18 during the World War II period, TCE was in critical</p> <p>19 demand, sir?</p> <p>20 MR. BARR: Objection, beyond the</p> <p>21 scope of the witness' direct and his opinions.</p> <p>22 A. I recall the deposition testimony by other</p> <p style="text-align: right;">Page 553</p>

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<p>1 witnesses or expert opinions by other witnesses that</p> <p>2 it was in critical command -- demand; but other than</p> <p>3 that deposition, I saw no other document --</p> <p>4 documentary evidence --</p> <p>5 BY MR. WINE:</p> <p>6 Q. Do you have -- I'm sorry.</p> <p>7 A. -- that it was in critical demand.</p> <p>8 Q. Do you have any firsthand knowledge to</p> <p>9 agree or disagree with that opinion, sir?</p> <p>10 MR. BARR: Objection. Same</p> <p>11 objections; beyond the scope of the direct, beyond</p> <p>12 his opinion, scope of his opinions.</p> <p>13 A. I have no firsthand knowledge --</p> <p>14 knowledge, one way or the other.</p> <p>15 BY MR. WINE:</p> <p>16 Q. Okay.</p> <p>17 (Sotto voce discussion.)</p> <p>18 BY MR. WINE:</p> <p>19 Q. And if the -- the material has value in a</p> <p>20 batch processing manufacturing facility such as Ryan</p> <p>21 and that it is being used to fulfill government</p> <p>22 contracts pursuant to mil spec and MPDs developed at</p> <p style="text-align: right;">Page 554</p>	<p>1 whether the item in question was entered into and</p> <p>2 made a part of the item delivered to and paid for by</p> <p>3 the government.</p> <p>4 Q. Is that consistent with the various</p> <p>5 clauses in the ASPRs that you've reviewed and</p> <p>6 testified about last week, sir?</p> <p>7 A. I believe it is.</p> <p>8 Q. Okay. How is -- is the definition, as</p> <p>9 you've used it in your report, sir, of material</p> <p>10 different from your definition that you just gave of</p> <p>11 an item of value?</p> <p>12 MR. BARR: Objection, assumes facts</p> <p>13 not in evidence, matter taken out of context.</p> <p>14 A. In my opinion, the two are comparable and</p> <p>15 consistent.</p> <p>16 BY MR. WINE:</p> <p>17 Q. Okay. And -- and your -- your definition</p> <p>18 of material that you include in your expert report</p> <p>19 at Page 16 was taken from the 1948 edition of the</p> <p>20 Armed Services Procurement Regulations, correct,</p> <p>21 sir?</p> <p>22 A. I can't quote you the footnotes of every</p> <p style="text-align: right;">Page 556</p>
<p>1 the site, the costs associated with that would be</p> <p>2 allocable to those contracts, correct, sir?</p> <p>3 MR. BARR: Objection, vague and</p> <p>4 ambiguous, calls for speculation.</p> <p>5 A. It would be allocable in the proportionate</p> <p>6 value of government contracts to commercial</p> <p>7 contracts and then the relationship between</p> <p>8 fixed-price contracts and cost contracts.</p> <p>9 BY MR. WINE:</p> <p>10 Q. Sir, for purposes of -- of these title</p> <p>11 vesting provisions and the area of inquiry that</p> <p>12 we've been going into, how do we determine whether</p> <p>13 something has value?</p> <p>14 MR. BARR: Objection, vague and</p> <p>15 ambiguous.</p> <p>16 BY MR. WINE:</p> <p>17 Q. Or how do you -- let me -- how do you</p> <p>18 determine, given your government contracting</p> <p>19 experience, whether an item has value and is,</p> <p>20 therefore, subject to these -- these title vesting</p> <p>21 principles?</p> <p>22 A. In my opinion, it would be dependent upon</p> <p style="text-align: right;">Page 555</p>	<p>1 document I referenced, but if -- I take your word</p> <p>2 for it if you say it is.</p> <p>3 Q. Right. So, your definition of "material,"</p> <p>4 though, in your expert report is broader than the</p> <p>5 definition of item of value that just -- you just</p> <p>6 gave me insofar as it also includes the following --</p> <p>7 I'll read the entire definition as quoted here.</p> <p>8 "Such property as may be incorporated</p> <p>9 into or attached to the end product to be delivered</p> <p>10 to the government" -- and that's consistent with</p> <p>11 what you just defined, sir -- "or as may be consumed</p> <p>12 or expended in the performance of a contract. It</p> <p>13 includes, but is not limited to, raw and processed</p> <p>14 material, parts, components, assemblies, expendable</p> <p>15 small tools and consumable goods."</p> <p>16 Sir, would that include chemical</p> <p>17 feedstocks then?</p> <p>18 A. It --</p> <p>19 MR. BARR: Same objections.</p> <p>20 A. It says what it says.</p> <p>21 BY MR. WINE:</p> <p>22 Q. Let's talk about scrap. Scrap metal, for</p> <p style="text-align: right;">Page 557</p>

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<p>1 example, isn't included in the ultimate end item</p> <p>2 delivered to the government; but the government</p> <p>3 recognizes it as having value and accounted for it</p> <p>4 in the progress payment title vesting procedures</p> <p>5 that it engaged in with the contractor, did it not,</p> <p>6 sir?</p> <p>7 A. I'm not sure what you mean by "accounted</p> <p>8 for it."</p> <p>9 Q. The government charged the contractor for</p> <p>10 the scrap value of any scrap that the government --</p> <p>11 that the contractor sold for that purpose, correct?</p> <p>12 A. My recollection is that the applicable</p> <p>13 ASPR provisions specify that when scrap was sold,</p> <p>14 the proceeds of those sales would be credited back</p> <p>15 to the government.</p> <p>16 Q. Because the government owned title to the</p> <p>17 scrap, correct?</p> <p>18 A. I saw no provision where it said the</p> <p>19 government had title to it.</p> <p>20 Q. So, then, why was the government being</p> <p>21 given credit for the value of the scrap if it didn't</p> <p>22 own title to the scrap?</p> <p style="text-align: right;">Page 558</p>	<p>1 regarding that scrap metal containing cutting oil or</p> <p>2 lubricant residues or TCE residues on it before it</p> <p>3 was collected and placed into bins and placed in</p> <p>4 segregable areas at the site?</p> <p>5 MR. BARR: Same objections; vague and</p> <p>6 confusing, assumes facts not in evidence.</p> <p>7 A. I do recall at least one deposition where</p> <p>8 they had indicated that some of the scrap did have</p> <p>9 such residue on it.</p> <p>10 BY MR. WINE:</p> <p>11 Q. Do you recall, based on your familiarity</p> <p>12 with the site and information that you've reviewed</p> <p>13 in this matter, whether there were specific areas of</p> <p>14 the site designated for storage of scrap?</p> <p>15 MR. BARR: Beyond the scope of the</p> <p>16 direct. Also same objections.</p> <p>17 A. I do not recall.</p> <p>18 BY MR. WINE:</p> <p>19 Q. And do you have any recollection of</p> <p>20 information that those specific areas designated for</p> <p>21 storage of scrap before sent off-site for recycling</p> <p>22 are areas of concern for PCB contamination?</p> <p style="text-align: right;">Page 560</p>
<p>1 A. If the -- well, let me go back to my</p> <p>2 experience.</p> <p>3 And based on my personal experience,</p> <p>4 those situations where the contractor gave credit</p> <p>5 back to the government is where the contractor had</p> <p>6 segregated the scrap generated from government</p> <p>7 contracts to commercial contracts.</p> <p>8 I saw no documentation in the</p> <p>9 documents that I reviewed that indicate that the</p> <p>10 contractor had, in fact, segregated the scrap</p> <p>11 material and had, in fact, credited the proceeds</p> <p>12 from those sales back to the government.</p> <p>13 Q. Are you aware of testimony by witnesses --</p> <p>14 by Ryan witnesses in this matter that scrap metals,</p> <p>15 stainless steel and otherwise, were collected at</p> <p>16 this site and were sold as scrap and that that money</p> <p>17 was credited back to the government?</p> <p>18 MR. BARR: Objection, compound.</p> <p>19 A. I do not specifically recall that part of</p> <p>20 the deposition testimony.</p> <p>21 BY MR. WINE:</p> <p>22 Q. And do you remember seeing any testimony</p> <p style="text-align: right;">Page 559</p>	<p>1 MR. BARR: Same objections.</p> <p>2 A. I do not know what areas are of concern</p> <p>3 relative to PCB contamination.</p> <p>4 BY MR. WINE:</p> <p>5 Q. Now, during Day 1 of your testimony with</p> <p>6 Mr. Barr, he asked you if you had found any evidence</p> <p>7 in this case that Ryan or TRA provided any written</p> <p>8 notice to a government contracting officer regarding</p> <p>9 the kinds of claims that TDY makes in this case.</p> <p>10 And you responded, "I have not seen</p> <p>11 any such evidence."</p> <p>12 Do you recall that testimony, sir?</p> <p>13 A. I believe I do.</p> <p>14 Q. Now, that kind of notice would be</p> <p>15 necessary if TDY was presenting a claim for</p> <p>16 adjudication by the contracting officer, correct?</p> <p>17 A. My recollection is that in most of the</p> <p>18 release forms that were executed by the contract,</p> <p>19 especially subsequent to 1948, contain a provision</p> <p>20 that the waiver applied to those situations unless</p> <p>21 the contractor had provided written notice to the</p> <p>22 contracting officer within six years of the date of</p> <p style="text-align: right;">Page 561</p>

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<p>1 execution of that claim.</p> <p>2 Q. Okay. And what --</p> <p>3 A. Or execution of that form.</p> <p>4 Q. And what happens in the case of a latent</p> <p>5 defect or condition that the contractor doesn't know</p> <p>6 about for six or more years?</p> <p>7 MR. BARR: Objection, assumes facts</p> <p>8 not in evidence, vague, calls for speculation,</p> <p>9 incomplete hypothetical.</p> <p>10 A. In -- in my mind, a latent defect is</p> <p>11 different from the issue of releases that we've been</p> <p>12 talking about.</p> <p>13 A latent defect is one in the end</p> <p>14 product that cannot be disclosed through reasonable</p> <p>15 inspection.</p> <p>16 BY MR. WINE:</p> <p>17 Q. Do you know when Ryan first became aware</p> <p>18 of the need to remediate PCBs or TCE at the site?</p> <p>19 MR. BARR: Objection, beyond the</p> <p>20 scope of direct and the witness' opinions.</p> <p>21 A. I do not know.</p> <p>22</p> <p style="text-align: right;">Page 562</p>	<p>1 contract claims?</p> <p>2 MR. BARR: Same objections.</p> <p>3 A. I do not know.</p> <p>4 BY MR. WINE:</p> <p>5 Q. Now, on Monday, Mr. Barr asked you did you</p> <p>6 determine in your review of the documents and</p> <p>7 testimony in this case whether or not the government</p> <p>8 contracted to deliver any government-owned military</p> <p>9 hardware --</p> <p>10 MR. WINE: Bless you.</p> <p>11 BY MR. WINE:</p> <p>12 Q. -- containing any hazardous substances to</p> <p>13 the Harbor Drive Plant in order for Ryan or TRA to</p> <p>14 refurbish or repair that hardware.</p> <p>15 And you said, "I saw no such evidence</p> <p>16 in any of the contracts that I reviewed."</p> <p>17 Do you remember that testimony, sir?</p> <p>18 A. That's correct.</p> <p>19 Q. What about the delivery of military</p> <p>20 hardware containing substances for purposes other</p> <p>21 than refurbishment or repair?</p> <p>22 A. I saw no such evidence.</p> <p style="text-align: right;">Page 564</p>
<p>1 BY MR. WINE:</p> <p>2 Q. If I told you, sir, it was a period of</p> <p>3 decades from when the -- the site -- first began</p> <p>4 performing manufacturing operations at the site,</p> <p>5 would you have any reason to disagree with me?</p> <p>6 MR. BARR: Same objections.</p> <p>7 A. I have no reason to agree or disagree.</p> <p>8 BY MR. WINE:</p> <p>9 Q. Okay. Now, other than the release</p> <p>10 provision that you cited to, are you aware of any</p> <p>11 statute or regulation that requires Ryan to provide</p> <p>12 a government contracting officer with a written</p> <p>13 notice before it can seek contribution from the</p> <p>14 United States as a PRP under CERCLA?</p> <p>15 MR. BARR: Objection, calls for legal</p> <p>16 opinions, beyond the scope of the witness' direct</p> <p>17 and his opinions.</p> <p>18 A. As I told you this morning, I am not an</p> <p>19 expert in CERCLA.</p> <p>20 BY MR. WINE:</p> <p>21 Q. Okay. So, you have no way of knowing</p> <p>22 whether CERCLA claims are somehow different from</p> <p style="text-align: right;">Page 563</p>	<p>1 Q. You're aware, are you not, sir, that the</p> <p>2 government located degreasers at the site that were</p> <p>3 specified to use TCE in their operations, were you</p> <p>4 not?</p> <p>5 MR. BARR: Objection, misstates the</p> <p>6 witness' testimony, beyond the scope of the witness'</p> <p>7 direct and his opinions.</p> <p>8 BY MR. WINE:</p> <p>9 Q. Were you aware of that, sir?</p> <p>10 A. Yes, I am.</p> <p>11 Q. Okay. So, that was a piece of equipment</p> <p>12 sourced by the government to TDY --</p> <p>13 MR. BARR: Also assumes facts not in</p> <p>14 evidence.</p> <p>15 BY MR. WINE:</p> <p>16 Q. -- to TDY to use with a hazardous</p> <p>17 substance, correct?</p> <p>18 A. That was not --</p> <p>19 MR. BARR: Assumes facts not in</p> <p>20 evidence, vague and ambiguous, argumentative and</p> <p>21 beyond the scope of the witness' direct and his</p> <p>22 opinions.</p> <p style="text-align: right;">Page 565</p>

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<p>1 A. That was not your question.</p> <p>2 BY MR. WINE:</p> <p>3 Q. Okay.</p> <p>4 A. Your question was delivered items to the</p> <p>5 contractor with TCE or hazardous material and not</p> <p>6 for use in connection with.</p> <p>7 Q. You're right. It's a different question.</p> <p>8 So, now, the next question, which I'm</p> <p>9 asking you, is: You're aware, are you not, sir,</p> <p>10 that the government sourced equipment to the Ryan</p> <p>11 site to be used with hazardous materials? Correct?</p> <p>12 MR. BARR: Objection. Same</p> <p>13 objections.</p> <p>14 A. That is the information which I have, yes.</p> <p>15 BY MR. WINE:</p> <p>16 Q. And you're familiar, in part through your</p> <p>17 experience at Kelly Air Force Base, that the use of</p> <p>18 degreasers often involves, through drag out or other</p> <p>19 operations, releases of TCE in the surrounding</p> <p>20 areas, are you not, sir?</p> <p>21 MR. BARR: Same objections; beyond</p> <p>22 the scope of this witness.</p> <p style="text-align: right;">Page 566</p>	<p>1 BY MR. WINE:</p> <p>2 Q. And, in fact, the condition of the</p> <p>3 facilities agreement was that if Ryan was not</p> <p>4 productively using that equipment, the government</p> <p>5 retained the right to take the equipment back and</p> <p>6 put it at a site where it would be productively</p> <p>7 used, correct?</p> <p>8 A. That is my understanding.</p> <p>9 Q. Okay. And you're aware, are you not,</p> <p>10 sir -- well, let's -- let's go to a different</p> <p>11 question Mr. Barr asked you.</p> <p>12 He asked you whether or not any</p> <p>13 government contracts with Ryan or TRA during this</p> <p>14 period called for the company to test any</p> <p>15 government-owned military hardware that contained</p> <p>16 hazardous substances at the Harbor Drive Plant.</p> <p>17 And you responded, "I saw no such</p> <p>18 evidence."</p> <p>19 Do you recall that testimony during</p> <p>20 Monday's --</p> <p>21 A. That is correct.</p> <p>22 Q. -- exam?</p> <p style="text-align: right;">Page 568</p>
<p>1 A. Based upon my personal observation, it is</p> <p>2 not necessarily associated with it. It can be, but</p> <p>3 it's not necessary.</p> <p>4 BY MR. WINE:</p> <p>5 Q. Got it.</p> <p>6 Now, you're also aware that the</p> <p>7 government leased, through facilities agreements,</p> <p>8 large pieces of manufacturing equipment, like</p> <p>9 cutting equipment, that required the use of cutting</p> <p>10 oils and lubricants, are you not, sir?</p> <p>11 MR. BARR: Same objections.</p> <p>12 A. Yes, I am.</p> <p>13 BY MR. WINE:</p> <p>14 Q. And you're aware -- you understand, sir,</p> <p>15 that that equipment that the government leased to</p> <p>16 Ryan for use on government contracts could not be</p> <p>17 used without those lubricants and cutting oils,</p> <p>18 correct?</p> <p>19 MR. BARR: Same objections.</p> <p>20 A. I am aware they could not be used without</p> <p>21 the use of those kinds of cutting oils.</p> <p>22</p> <p style="text-align: right;">Page 567</p>	<p>1 Did you see any evidence in the</p> <p>2 record, sir, regarding Ryan's testing of rocket</p> <p>3 engines at this site?</p> <p>4 A. Not that I recall.</p> <p>5 Q. Do you recall seeing any evidence of -- of</p> <p>6 Ryan performing tests of jet engines at this site?</p> <p>7 A. I saw some documents that alluded to</p> <p>8 testing jet engines, but it doesn't -- did not</p> <p>9 necessarily say it was used jet engines that had</p> <p>10 been returned to the contractor for testing.</p> <p>11 Q. Were you able to determine who owned those</p> <p>12 jet engines?</p> <p>13 A. I was not.</p> <p>14 Q. Did you see any evidence in the record</p> <p>15 regarding the use of guns or the -- the -- an armory</p> <p>16 area of the site where guns were used at the site?</p> <p>17 A. I do not.</p> <p>18 Q. Okay. And I take it since you didn't see</p> <p>19 any evidence regarding gun -- guns being used at the</p> <p>20 site or rockets being tested at the site, that you</p> <p>21 don't know whether these rockets or guns were</p> <p>22 government-owned equipment?</p> <p style="text-align: right;">Page 569</p>

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<p>1 A. That is correct.</p> <p>2 Q. Now, again, aside from the Convair, the</p> <p>3 advance agreement that you testified about last</p> <p>4 week, you're not offering an opinion in this matter</p> <p>5 regarding Ryan's prior recovery of environmental</p> <p>6 costs via overhead allocations, are you, sir?</p> <p>7 A. That is correct.</p> <p>8 MR. BARR: Objection, vague and</p> <p>9 ambiguous.</p> <p>10 BY MR. WINE:</p> <p>11 Q. Okay. I'm sorry. Your answer again?</p> <p>12 A. That is correct.</p> <p>13 Q. Now, Mr. Barr asked you last Monday, "With</p> <p>14 respect to TDY's argumentative that the government</p> <p>15 would now pay for the environmental site cleanup</p> <p>16 costs as part of overhead cost pools, in your</p> <p>17 opinion, is that a reasonable assumption?"</p> <p>18 And you responded, "In my opinion, it</p> <p>19 is not a reasonable assumption -- assumption."</p> <p>20 Sir, I reviewed your expert report</p> <p>21 and rebuttal report and did not find that opinion in</p> <p>22 your reports.</p> <p style="text-align: right;">Page 570</p>	<p>1 witness' prior testimony.</p> <p>2 A. I think you asked me if I had any</p> <p>3 responsibility in determining allowability of</p> <p>4 environmental issues or allocability of</p> <p>5 environmental issues. I don't think you've asked me</p> <p>6 if I had no involvement with any environmental</p> <p>7 issues.</p> <p>8 BY MR. WINE:</p> <p>9 Q. Okay. As to allowability and</p> <p>10 allocability -- and let's throw reasonableness in</p> <p>11 there as well -- you had no experience with that</p> <p>12 during your government employment, correct?</p> <p>13 A. That is correct.</p> <p>14 Q. And yet, when Mr. Barr asked you, "With</p> <p>15 respect to TDY's argument that the government would</p> <p>16 now pay for the environmental site cleanup costs as</p> <p>17 part of overhead cost pools, in your opinion, is</p> <p>18 that a reasonable assumption," that's exactly what</p> <p>19 he's asking you about, the allowability,</p> <p>20 allocability and reasonableness of those costs,</p> <p>21 correct?</p> <p>22 MR. BARR: Objection, argumentative,</p> <p style="text-align: right;">Page 572</p>
<p>1 Can you tell me why it was not</p> <p>2 located in your expert reports?</p> <p>3 A. I don't know.</p> <p>4 Q. Do you know when you formulated that</p> <p>5 opinion, sir?</p> <p>6 A. I do not recall.</p> <p>7 Q. Do you know -- can you tell me what</p> <p>8 methodology you utilized to derive that opinion,</p> <p>9 sir?</p> <p>10 A. It was through, as I had indicated, review</p> <p>11 of the ASPR, review of documents in the record,</p> <p>12 review of correspondence, review of contractor</p> <p>13 documentation, review of audit reports; but I can't</p> <p>14 specifically point to one document and tell you that</p> <p>15 was the basis of my opinion.</p> <p>16 Q. And if I recall correctly, your testimony</p> <p>17 before the lunch break was you had no</p> <p>18 responsibilities during your government employment</p> <p>19 as a contracting officer or contracting official as</p> <p>20 they related to environmental matters with</p> <p>21 contractors, correct?</p> <p>22 MR. BARR: Objection, misstates the</p> <p style="text-align: right;">Page 571</p>	<p>1 misstates the question and answer, also vague and</p> <p>2 ambiguous.</p> <p>3 A. I think my answer was it would depend upon</p> <p>4 the timing and the facts and circumstances</p> <p>5 surrounding that particular issue.</p> <p>6 BY MR. WINE:</p> <p>7 Q. Now, during Wednesday's testimony last</p> <p>8 week, you talked about the presence at the site of</p> <p>9 government inspectors, auditors, property</p> <p>10 administrators and -- and other personnel.</p> <p>11 Do you recall that, sir.</p> <p>12 MR. BARR: Objection, the testimony</p> <p>13 speaks for itself. Object to the summary.</p> <p>14 A. I recall saying that there were auditors,</p> <p>15 inspectors and property administrators who had the</p> <p>16 responsibility of administering government</p> <p>17 contracts.</p> <p>18 BY MR. WINE:</p> <p>19 Q. Were military personnel located at the</p> <p>20 site, uniformed military personnel in the 1940s?</p> <p>21 A. I saw no documentation that I can recall</p> <p>22 that indicated there were on-site military</p> <p style="text-align: right;">Page 573</p>

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<p>1 personnel.</p> <p>2 Q. Do you recall seeing any testimony in</p> <p>3 expert reports, documents or -- or deposition</p> <p>4 testimony that there were military guards guarding</p> <p>5 the site during specific times of its operation?</p> <p>6 A. I do not recall such.</p> <p>7 Q. Do you recall there being a military</p> <p>8 detachment located at the site associated with the</p> <p>9 Big Safari program?</p> <p>10 A. There was a group of uniformed military</p> <p>11 personnel that were designated as a detachment</p> <p>12 during Big Safari.</p> <p>13 Q. Were there any military -- uniformed</p> <p>14 military personnel located at the site in the 1950s?</p> <p>15 A. Not that I recall.</p> <p>16 Q. Have you seen any evidence, or you just</p> <p>17 don't recall?</p> <p>18 A. I saw no evidence that indicated there</p> <p>19 were.</p> <p>20 Q. How about during the 1960s?</p> <p>21 A. I saw --</p> <p>22 MR. BARR: Objection.</p> <p style="text-align: right;">Page 574</p>	<p>1 BY MR. WINE:</p> <p>2 Q. Now, Mr. Barr asked you last Wednesday,</p> <p>3 "Government contracting or inspection personnel</p> <p>4 during World War II supervise or direct Ryan</p> <p>5 employees or executives concerning the" -- oh, I'm</p> <p>6 sorry.</p> <p>7 "Did government contracting or</p> <p>8 inspection personnel during World War II supervise</p> <p>9 or direct Ryan employees or executives concerning</p> <p>10 the actual day-to-day manufacturing operations or</p> <p>11 processes at the plant?"</p> <p>12 MR. BARR: Objection, misstates my</p> <p>13 question.</p> <p>14 BY MR. WINE:</p> <p>15 Q. And you answered, "None whatsoever,</p> <p>16 indication that government employees, either</p> <p>17 inspectors or contracting officers, directed the</p> <p>18 contractor to do anything outside the scope or</p> <p>19 breadth of contracts that existed between the</p> <p>20 government and the contractor."</p> <p>21 Do you recall giving that testimony,</p> <p>22 sir?</p> <p style="text-align: right;">Page 576</p>
<p>1 A. I saw no evidence that there were</p> <p>2 uniformed military at that site during the 1960s.</p> <p>3 BY MR. WINE:</p> <p>4 Q. With the exception of Big Safari?</p> <p>5 A. With the exception of Big Safari.</p> <p>6 Q. How about in the 1970s?</p> <p>7 A. Same answer.</p> <p>8 Q. How about the 1980s?</p> <p>9 A. Same answer.</p> <p>10 Q. And the same answer for the 1990s?</p> <p>11 A. That's correct.</p> <p>12 Q. Okay. So, if Ryan witnesses who worked at</p> <p>13 the site testify that there were uniformed military</p> <p>14 personnel resident at the site, you wouldn't be able</p> <p>15 to tell me, sitting here today, what those personnel</p> <p>16 were doing there?</p> <p>17 MR. BARR: Objection, calls for --</p> <p>18 assumes facts not in evidence. It's a hypothetical,</p> <p>19 vague and ambiguous.</p> <p>20 A. Since I -- I don't know that they were</p> <p>21 there and I don't know what they would have been</p> <p>22 doing there, I can't answer that question.</p> <p style="text-align: right;">Page 575</p>	<p>1 A. Yes, I do.</p> <p>2 Q. Now, I couldn't find that opinion in your</p> <p>3 expert report in either Exhibit 3 or Exhibit 4.</p> <p>4 Can you direct me to that opinion in</p> <p>5 either of those documents, sir?</p> <p>6 MR. BARR: Objection, assumes facts</p> <p>7 not in evidence, misstates the reports which speak</p> <p>8 for themselves.</p> <p>9 A. Since I didn't memorize my expert report,</p> <p>10 I cannot direct you to a specific statement to that</p> <p>11 effect.</p> <p>12 BY MR. WINE:</p> <p>13 Q. Do you know when you formulated that</p> <p>14 opinion, sir?</p> <p>15 MR. BARR: Same objections.</p> <p>16 A. Same answer that I gave you a while ago on</p> <p>17 other opinions. I can't specifically tell you when</p> <p>18 I formulated that opinion.</p> <p>19 BY MR. WINE:</p> <p>20 Q. Aside from your experience as a government</p> <p>21 contracting official that began in the 1960s, is it</p> <p>22 fair to say, sir, that the only way you know what</p> <p style="text-align: right;">Page 577</p>

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<p>1 government officials, whether they were inspectors 2 or auditors, property administrators, were doing at 3 the Ryan site was through your review of documents 4 in this matter? 5 A. That is correct. 6 Q. Okay. And you've stated a number of 7 times, I believe, that the documentary record in 8 this case, because of document retention policies 9 and for other reasons, just the passage of time, is 10 necessarily incomplete; is that correct? 11 A. That is correct. 12 Q. Now, you stated during Day 2 that "There 13 was no documentation that I saw during the World War 14 II period that indicates the government supervised 15 any action relative to the handling and/or disposal 16 of hazardous wastes." 17 Do you see that? Do you recall 18 saying that, sir? 19 A. Yes, I do. 20 Q. Now, what about the handling of hazardous 21 substances such as chemicals used in batch 22 processing?</p> <p style="text-align: right;">Page 578</p>	<p>1 purpose of its use lubricants and cutting oils. 2 Do you recall that testimony, sir? 3 MR. BARR: Objection, confusing, 4 assumes facts not in evidence. 5 A. That is correct. 6 BY MR. WINE: 7 Q. And when you made these various site 8 visits to other contracting facilities that you were 9 personally involved with, did any of those 10 contractors that you visited their site use 11 equipment like lathes or cutting machines or other 12 big machinery that was used to cut or bend or mold 13 metals? 14 A. Yes. 15 Q. And did any of those machines use cutting 16 oils and lubricants? 17 A. Yes. 18 Q. And do you know whether any of those 19 lubricants, by virtue of their applications, contain 20 PCBs? 21 A. I do not know. 22 Q. And when you personally observed this</p> <p style="text-align: right;">Page 580</p>
<p>1 Did you see any documents regarding 2 the government's supervision of any action relative 3 to the handling of those materials, sir? 4 A. During what period? 5 Q. World War II. 6 A. I saw no such documentation. 7 Q. Did you see any MPDs from the World War II 8 period? 9 A. I reviewed a number of MPDs. I don't 10 recall the dates of those documents. 11 Q. Now, you stated as well, "I saw no 12 documentation in the volumes of documents that I 13 reviewed that indicated that the government in any 14 way, shape, form or fashion had issued an 15 instruction to the contractor relative to the 16 handling of PCB waste." 17 Do you recall giving that testimony, 18 sir? 19 A. Yes. 20 Q. Yet you've also given testimony today, 21 sir, that you are aware that the government gave to 22 Ryan certain machinery that required as an inherent</p> <p style="text-align: right;">Page 579</p>	<p>1 equipment, did you see any residues on the material 2 in process or around the equipment that was being 3 used? 4 A. I do not recall seeing any of those 5 cutting oils or other similar items around the 6 equipment being used. 7 Q. Did you ever see those residues on any 8 material other than in a contained manner in the 9 equipment itself? 10 MR. BARR: Objection, vague and 11 ambiguous. 12 A. Not that I recall. 13 BY MR. WINE: 14 Q. Do you know when the government started 15 issuing guidance to government contractors regarding 16 the handling of PCBs? 17 MR. BARR: Objection, assumes facts 18 not in evidence. 19 A. I have seen no -- 20 MR. BARR: Vague and ambiguous. 21 A. I have seen no evidence that the 22 government ever issued guidance to contractors</p> <p style="text-align: right;">Page 581</p>

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<p>1 relative to handling of PCBs.</p> <p>2 BY MR. WINE:</p> <p>3 Q. What about the handling of chromium?</p> <p>4 MR. BARR: Same objections.</p> <p>5 A. Same answer.</p> <p>6 BY MR. WINE:</p> <p>7 Q. Were you aware that the government issued</p> <p>8 guidance regarding the use or handling of chromium</p> <p>9 within the last five years?</p> <p>10 MR. BARR: Same objections.</p> <p>11 A. Within the last five years?</p> <p>12 BY MR. WINE:</p> <p>13 Q. Correct.</p> <p>14 A. Are you talking about 2006 through today?</p> <p>15 Q. Correct.</p> <p>16 A. Since that was not part of the relevant</p> <p>17 period and not included in the volume of documents I</p> <p>18 reviewed, no.</p> <p>19 Q. Okay. Sir, Mr. Barr asked you whether or</p> <p>20 not any DOD personnel supervised or directed Ryan or</p> <p>21 TRA personnel in the actual day-to-day manufacturing</p> <p>22 operations or processes in the plant.</p> <p style="text-align: right;">Page 582</p>	<p>1 A. That's correct.</p> <p>2 Q. And likewise, can you explain why that</p> <p>3 opinion does not appear in your expert report, sir?</p> <p>4 MR. BARR: Objection, assumes that</p> <p>5 it's not -- the reports speak for themselves,</p> <p>6 assumes facts not in evidence.</p> <p>7 A. Same answer I gave you a while ago.</p> <p>8 BY MR. WINE:</p> <p>9 Q. And I take it that your answer is the same</p> <p>10 regarding Mr. Barr's question regarding</p> <p>11 PCB-containing fluids that came out of any plant</p> <p>12 machinery or equipment -- or equipment?</p> <p>13 MR. BARR: Same objections.</p> <p>14 A. That is correct.</p> <p>15 BY MR. WINE:</p> <p>16 Q. And the same about the question that there</p> <p>17 was no evidence the government had in any way</p> <p>18 supervised or directed contractors in how to handle</p> <p>19 and/or dispose of hazardous chemicals?</p> <p>20 MR. BARR: Same objections.</p> <p>21 A. That's correct.</p> <p>22</p> <p style="text-align: right;">Page 584</p>
<p>1 And you said, "I saw no such</p> <p>2 evidence."</p> <p>3 Do you recall that testimony, sir?</p> <p>4 A. That is correct.</p> <p>5 Q. When did you form that opinion?</p> <p>6 A. Same answer I gave you a while ago. I</p> <p>7 cannot specifically tell you when I formed specific</p> <p>8 opinions.</p> <p>9 Q. And if I can't find that opinion in your</p> <p>10 expert report, can you explain why it doesn't appear</p> <p>11 there?</p> <p>12 MR. BARR: Objection, assumes facts</p> <p>13 not in evidence, the reports speak for themselves.</p> <p>14 A. I do not know.</p> <p>15 BY MR. WINE:</p> <p>16 Q. Okay. Likewise, Mr. Barr asked you</p> <p>17 whether or not any DOD personnel supervised or</p> <p>18 directed Ryan or TR -- TRA personnel in the usage of</p> <p>19 chemicals in manufacturing operations or processes.</p> <p>20 And you said you saw no such</p> <p>21 evidence.</p> <p>22 Do you recall that, sir?</p> <p style="text-align: right;">Page 583</p>	<p>1 BY MR. WINE:</p> <p>2 Q. Now, let's talk about MPDs and military</p> <p>3 specifications.</p> <p>4 I believe Mr. Barr showed you a</p> <p>5 series of documents that he represented to be MPDs</p> <p>6 that were used at other sites.</p> <p>7 Do you recall those documents, sir?</p> <p>8 MR. BARR: Objection, misstates</p> <p>9 the -- mischaracterizes the documents.</p> <p>10 A. I recall seeing some MPDs that were used</p> <p>11 by prime contractors on work that was subcontracted</p> <p>12 to Ryan or TDY, but I don't recall process documents</p> <p>13 at other sites. There may have been, but I don't</p> <p>14 recall.</p> <p>15 BY MR. WINE:</p> <p>16 Q. Okay. He asked you on -- on Wednesday of</p> <p>17 last week, "Are you aware of contractors other than</p> <p>18 Ryan or TRA who used manufacturing process data</p> <p>19 documents?"</p> <p>20 And your answer was, "I have seen</p> <p>21 contractors use similar type documents. They had</p> <p>22 the same purpose and intent as the MPD that were</p> <p style="text-align: right;">Page 585</p>

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<p>1 prepared by Ryan."</p> <p>2 Do you recall that testimony, sir?</p> <p>3 A. Yes, I do.</p> <p>4 Q. Now, are you aware of whether or not those</p> <p>5 other contractors engaged in discussions or had any</p> <p>6 interactions with their government customer in</p> <p>7 developing those MPDs?</p> <p>8 A. To the best of my recollection, those</p> <p>9 documents -- they weren't called, necessarily,</p> <p>10 MPDs -- were, in fact, reviewed by government</p> <p>11 representatives to assure that they were in</p> <p>12 compliance with the applicable specifications.</p> <p>13 Q. Okay. Mr. Barr went on and asked, "And in</p> <p>14 any of the TRA MPD documents that you reviewed, did</p> <p>15 any of them speak about chemical waste disposal</p> <p>16 methods or practices?"</p> <p>17 And you responded, "I saw no evidence</p> <p>18 whatsoever in any of the documents that spoke to</p> <p>19 disposal and/or handling of chemical waste."</p> <p>20 Do you recall that?</p> <p>21 A. That is correct.</p> <p>22 Q. What about the handling of chemicals in</p> <p style="text-align: right;">Page 586</p>	<p>1 A. Touching, introducing into the -- the</p> <p>2 vats, the disposal of those chemicals once they are</p> <p>3 considered to be spent. They do speak to the issue</p> <p>4 of the usage of -- usage of cleaning and anodizing,</p> <p>5 but I don't recall anything relative to specifically</p> <p>6 the handling of -- what I consider to be handling of</p> <p>7 the chemicals.</p> <p>8 Q. How about how often a chemical needs to be</p> <p>9 replaced in a piece of equipment?</p> <p>10 MR. BARR: Objection, vague and</p> <p>11 ambiguous, overly broad.</p> <p>12 A. The only thing I recall relative to the</p> <p>13 replacement of, quote, unquote, spent chemicals was</p> <p>14 in Mr. Ianucci's deposition; and he said that when</p> <p>15 they determined that the chemicals needed to be</p> <p>16 replaced, they -- he issued what he called a dump</p> <p>17 and recharge order.</p> <p>18 BY MR. WINE:</p> <p>19 Q. What about how long a material in process,</p> <p>20 a piece of cut metal or whatnot, is either placed in</p> <p>21 a certain process or dangled over the process so</p> <p>22 that chemicals can drip off of it?</p> <p style="text-align: right;">Page 588</p>
<p>1 the processing -- in the process itself?</p> <p>2 MR. BARR: Objection, asked and</p> <p>3 answered.</p> <p>4 A. To the best of my recollection, there was</p> <p>5 nothing that I recall seeing in any of the MPDs that</p> <p>6 spoke to the issue of the handling of those kinds of</p> <p>7 chemicals.</p> <p>8 BY MR. WINE:</p> <p>9 Q. That includes no MPDs regarding the</p> <p>10 handling of TCE?</p> <p>11 A. Not that I recall.</p> <p>12 MR. BARR: Objection, vague and</p> <p>13 ambiguous.</p> <p>14 BY MR. WINE:</p> <p>15 Q. Do you recall any MPDs that dealt with</p> <p>16 chrome plating or -- or chrome anodizing?</p> <p>17 A. There were MPDs that spoke to both the</p> <p>18 chemical cleaning and -- and anodizing, but I don't</p> <p>19 recall anything in those MPDs that spoke to the</p> <p>20 issue of handling.</p> <p>21 Q. When you use that term "handling," what do</p> <p>22 you mean, sir?</p> <p style="text-align: right;">Page 587</p>	<p>1 MR. BARR: What about it? Vague and</p> <p>2 ambiguous objection.</p> <p>3 MR. WINE: I'm not asking you the</p> <p>4 questions.</p> <p>5 A. There were --</p> <p>6 MR. BARR: Objection.</p> <p>7 A. There were some statements relative to</p> <p>8 what was called loiter time and there were also some</p> <p>9 statements that when an item was removed from the</p> <p>10 vapor degreasing, that it had to be rotated in order</p> <p>11 for the chemicals to drip off of the component.</p> <p>12 I don't recall the amount of time</p> <p>13 that the item remained in the -- the vapor above</p> <p>14 the -- the tank. I think they called it loiter</p> <p>15 time, if I recall; but I don't remember how much</p> <p>16 time that was.</p> <p>17 BY MR. WINE:</p> <p>18 Q. Do you recall under the facilities</p> <p>19 contracts, or in any of the documents associated</p> <p>20 with any of the facilities documents -- facilities</p> <p>21 contracts, discussion of cleaning of tooling and --</p> <p>22 and specifically removal of cutting oils and</p> <p style="text-align: right;">Page 589</p>

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<p>1 lubricants from tooling used in larger cutting 2 machines?</p> <p>3 MR. BARR: Objection, overly broad, 4 vague and ambiguous.</p> <p>5 A. I do not recall seeing that in any 6 facilities contract.</p> <p>7 BY MR. WINE:</p> <p>8 Q. Do you know how Ryan went about cleaning 9 tooling that was government-owned?</p> <p>10 A. The only thing I recall was that on small 11 items, they had some small tanks that they dipped 12 those items in. I don't recall if it was limited 13 to, quote, unquote, special tools or not.</p> <p>14 Q. Do you know what -- where those tools were 15 placed once they had been cleaned?</p> <p>16 MR. BARR: Objection, beyond the 17 scope of the witness' direct or his -- and his 18 reports.</p> <p>19 A. I do -- do not recall seeing anything 20 relative to where they stored special tools.</p> <p>21 BY MR. WINE:</p> <p>22 Q. Now, the documents that you discussed with Page 590</p>	<p>1 mischaracterizes the record, vague and ambiguous, 2 argumentative.</p> <p>3 A. I don't necessarily agree with the term 4 "oversight." I will agree that they were apparently 5 submitted to the government for review and approval, 6 but I don't necessarily agree with the term that the 7 government exercised oversight in their preparation.</p> <p>8 BY MR. WINE:</p> <p>9 Q. You recall Mr. Ianucci's testimony that 10 you reviewed in the formulation of your expert 11 opinions, correct?</p> <p>12 A. Yes, I do.</p> <p>13 Q. Now, the MPDs at issue here are specific 14 to this site, correct?</p> <p>15 A. That is correct.</p> <p>16 Q. They couldn't be used at another 17 manufacturing facility, correct?</p> <p>18 A. It is an internal Ryan or TDY document.</p> <p>19 Q. And when I deposed you in 2009, it was 20 your testimony that you had no basis to disagree 21 with Mr. Ianucci's description of how the MPD 22 development process worked with the government, Page 592</p>
<p>1 Mr. Barr that were like the MPDs at Ryan -- they 2 weren't called MPDs but they were documents that 3 were similar types of documents that we talked about 4 just a moment ago -- those documents aren't 5 referenced in your expert report, are they, sir?</p> <p>6 A. That is correct.</p> <p>7 Q. Why aren't they?</p> <p>8 A. I saw no need to reference those kinds of 9 documents.</p> <p>10 Q. And -- but you did see a need to testify 11 about them last week?</p> <p>12 A. I was not aware that I had to limit my 13 deposition testimony only to those specific points 14 that were in my expert report.</p> <p>15 Q. And you didn't express any opinions in 16 your expert report regarding those MPD-like 17 documents, correct?</p> <p>18 A. Not that I recall.</p> <p>19 Q. The MPDs at issue in this case developed 20 by Ryan with oversight by the United States, those 21 are specific to this site, are they not?</p> <p>22 MR. BARR: Objection, Page 591</p>	<p>1 correct?</p> <p>2 MR. BARR: Objection, testimony 3 speaks for itself, asked and answered.</p> <p>4 A. I don't specifically recall what I said in 5 2009 on that issue.</p> <p>6 BY MR. WINE:</p> <p>7 Q. Sitting here today, sir, do you have any 8 basis to disagree with Mr. Ianucci's testimony about 9 how MPDs were developed between Ryan and the United 10 States?</p> <p>11 A. Relative --</p> <p>12 MR. BARR: Same objections.</p> <p>13 A. Relative to his statement that they were 14 submitted to the -- I think you said DCASR for 15 review and approval. Other than that, no.</p> <p>16 BY MR. WINE:</p> <p>17 Q. And you recall his testimony that there 18 were multiple instances of the government going back 19 and forth and disapproving certain MPDs provided by 20 Ryan and negotiations between the parties back and 21 forth until a final MPD could be agreed upon?</p> <p>22 A. And I think that I testified that after Page 593</p>

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<p>1 that process was complete, they represented a mutual</p> <p>2 agreement between the parties relative to that MPD.</p> <p>3 Q. But let's get to the process itself. You</p> <p>4 recall the -- the description of that process</p> <p>5 between the United States and TDY, correct?</p> <p>6 MR. BARR: Objection, vague and</p> <p>7 ambiguous.</p> <p>8 A. Yes, I do.</p> <p>9 BY MR. WINE:</p> <p>10 Q. And sitting here today, you have no reason</p> <p>11 to disagree with the process Mr. Ianucci described</p> <p>12 and that I just summarized, correct?</p> <p>13 A. I have no reason to disagree with what</p> <p>14 Mr. Ianucci said.</p> <p>15 Q. Okay. And it's also your understanding</p> <p>16 that TDY could not field an MPD to the floor of the</p> <p>17 production facility to begin manufacturing processes</p> <p>18 unless and until the United States had said that</p> <p>19 that MPD met its approval, correct?</p> <p>20 MR. BARR: Same objections; asked and</p> <p>21 answered.</p> <p>22 A. I am not aware of anything in writing that</p> <p style="text-align: right;">Page 594</p>	<p>1 BY MR. WINE:</p> <p>2 Q. Couldn't -- it couldn't necessarily find</p> <p>3 the -- the contractor in default?</p> <p>4 A. Whether or not the government would</p> <p>5 exercise its rights to terminate the contract in</p> <p>6 default is a hypothetical issue.</p> <p>7 Q. It could use that right afforded to it if</p> <p>8 the contractor did not comply with the government's</p> <p>9 disagreement with a particular manufacturing</p> <p>10 process, correct?</p> <p>11 MR. BARR: Same objections;</p> <p>12 incomplete, improper hypothetical.</p> <p>13 A. In theory but not in -- probably not in</p> <p>14 practice.</p> <p>15 BY MR. WINE:</p> <p>16 Q. Are you aware of whether military</p> <p>17 specifications or government-approved manufacturing</p> <p>18 production documents have ever use -- been used by a</p> <p>19 court as an allocation factor in determining</p> <p>20 equitable allocation between the United States and a</p> <p>21 government contractor?</p> <p>22 MR. BARR: Objection, calls for a</p> <p style="text-align: right;">Page 596</p>
<p>1 says that they were prohibited from deploying an MPD</p> <p>2 until it had been approved by the government other</p> <p>3 than Mr. Ianucci's testimony.</p> <p>4 BY MR. WINE:</p> <p>5 Q. Well, sir, let me ask you: In your</p> <p>6 experience, if a contractor in the United States had</p> <p>7 a disagreement about an MPD, how to meet a mil spec</p> <p>8 via a document like an MPD and during that</p> <p>9 disagreement, the contractor fielded to the floor an</p> <p>10 MPD that the government did not agree with, what</p> <p>11 would be the government's reaction to that?</p> <p>12 MR. BARR: Objection, calls for a</p> <p>13 hypothetical, incomplete information, improper,</p> <p>14 vague and ambiguous.</p> <p>15 A. The government could refuse to accept the</p> <p>16 products that were produced at that document.</p> <p>17 BY MR. WINE:</p> <p>18 Q. The government could also find the</p> <p>19 contractor in default, couldn't it?</p> <p>20 MR. BARR: Object -- same objections.</p> <p>21 A. Not necessarily.</p> <p>22</p> <p style="text-align: right;">Page 595</p>	<p>1 legal analysis, beyond the scope of the witness'</p> <p>2 testimony and his expert reports.</p> <p>3 A. Since I'm not familiar with every case</p> <p>4 ever brought by anybody in industry against the</p> <p>5 Federal Government, I can't answer that question.</p> <p>6 BY MR. WINE:</p> <p>7 Q. Are you aware of any such case in which</p> <p>8 that happened? I'm not asking about all of them,</p> <p>9 just any of them.</p> <p>10 MR. BARR: Same objections.</p> <p>11 A. First question you asked was any of them,</p> <p>12 but I am not aware of any one specific case in which</p> <p>13 the -- the Court used that kind of argument.</p> <p>14 BY MR. WINE:</p> <p>15 Q. Okay. Now, Mr. Barr asked you a number of</p> <p>16 questions as they related to Appendix B of the Armed</p> <p>17 Services Procurement Regulations last Wednesday.</p> <p>18 Do you recall that, sir?</p> <p>19 A. Yes, I do.</p> <p>20 Q. Okay. What opinions in this matter are</p> <p>21 you offering with respect to Appendix B to the Armed</p> <p>22 Services Procurement Regulations?</p> <p style="text-align: right;">Page 597</p>

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<p>1 MR. BARR: Objection, overly broad, 2 vague and ambiguous, testimony speaks for itself and 3 his reports. 4 A. Appendix B provided to the government 5 property administrator the basic guidance relative 6 to the administration of government property 7 provided to a contractor in performance of a 8 contract. 9 BY MR. WINE: 10 Q. Okay. Did it implicate or -- or identify 11 other documents that were relevant to that purpose, 12 sir? 13 MR. BARR: Objection, vague. 14 A. Did what identify the documents? 15 BY MR. WINE: 16 Q. Did Appendix B reference any other 17 documents that formed that process, sir? 18 THE REPORTER: I'm sorry. Can you 19 repeat that question? 20 BY MR. WINE: 21 Q. Did Appendix B identify any other 22 documents --</p> <p style="text-align: right;">Page 598</p>	<p>1 A. That is correct. 2 Q. Now, do you recall last Wednesday you 3 stated the following testimony, "The documents that 4 I have reviewed do not indicate that the government 5 did, in fact, inspect government-furnished 6 equipment. They have the right to inspect it, but I 7 found no documents on the record that they had, in 8 fact, conducted those kinds of inspections"? 9 Do you recall that, sir? 10 A. That is correct. 11 Q. What documentation are you referring to 12 that gave the government the right to inspect 13 government-furnished equipment? 14 A. The facilities contracts and then the 15 language in the ASPR relative to facilities. 16 Q. And what -- let's see here. Let's start 17 with Exhibit 80. I'm going to show you a couple of 18 documents, sir, the government marked last week. 19 Sir, I've handed you what's been 20 marked as Government Exhibit -- or Jordan Exhibit 80 21 marked by the government last week for purposes of 22 your testimonial deposition.</p> <p style="text-align: right;">Page 600</p>
<p>1 MR. BARR: Objection, vague and 2 ambiguous. 3 BY MR. WINE: 4 Q. -- that were relevant to that purpose? 5 A. Appendix B is a many-paged document. I 6 cannot sit here today and tell you precisely what 7 every one of those pages says. 8 Q. Now, do you recall your testimony 9 regarding the role of property inspectors at the 10 site? 11 MR. BARR: Objection, misstates the 12 record. 13 A. There is no term that I recall using that 14 said, "property inspector." 15 There are inspectors who inspected 16 the products being produced; but they didn't 17 necessarily inspect, quote, unquote, "property." 18 BY MR. WINE: 19 Q. I'm sorry. I was -- I was using two 20 terms. There's -- there are inspectors, and then 21 there are property administrators. 22 Do you recall that term, sir?</p> <p style="text-align: right;">Page 599</p>	<p>1 While you're reviewing it, I'll state 2 for the record that this is one of the excerpts of 3 the Armed Services Procurement Regulations that the 4 government introduced, this one from July of 1976. 5 It's Bates-labeled US0250555 through 564. 6 Do you recall testifying about this 7 document, sir? 8 A. I believe so, yes. 9 Q. And what was the purpose of your testimony 10 with respect to this document, sir? 11 A. It established the foundation for advance 12 agreements. 13 Q. Okay. Now, 15-105 relates to facilities 14 contracts, does it not, sir? 15 A. (Reviewing document) That is correct. 16 Q. It references Part 5 of this section. 17 Do you see that? 18 A. Yes. 19 Q. Part 5 is not part of this excerpt, was 20 it, sir? 21 A. No. 22 Q. And do you know if you reviewed Part 5</p> <p style="text-align: right;">Page 601</p>

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<p>1 referenced herein in formulating your opinions as an</p> <p>2 expert in this matter?</p> <p>3 A. I don't specifically recall reviewing</p> <p>4 Part 5.</p> <p>5 Q. Do you know what Part 5 states based on</p> <p>6 your experience as a government contracting</p> <p>7 official?</p> <p>8 A. Not off the top of my head, no.</p> <p>9 Q. Did you make any effort to -- to find or</p> <p>10 review Part 5 in the formulation of your opinions in</p> <p>11 this matter, sir?</p> <p>12 A. Not that I recall.</p> <p>13 Q. You can put Exhibit 80 away. Let's go to</p> <p>14 103. I'll show you another document that the</p> <p>15 government marked last week for your testimonial</p> <p>16 deposition.</p> <p>17 While my colleague is retrieving it,</p> <p>18 it is Jordan Exhibit 103, a document produced by the</p> <p>19 United States with the Bates label US0061019 through</p> <p>20 1097. While the witness is reviewing the document,</p> <p>21 I'll describe it.</p> <p>22 It is a document that states at the</p> <p style="text-align: right;">Page 602</p>	<p>1 If you go to Page 1026, the bottom</p> <p>2 right-hand corner, under "Responsibilities of the</p> <p>3 Air Force Quality Control Inspector," 1,</p> <p>4 general, "b" --</p> <p>5 A. What's the -- what's the Bates number?</p> <p>6 Q. 1026, sir. I'll read the excerpt for you</p> <p>7 once you get to that page.</p> <p>8 If you look at (1)(b), "He is</p> <p>9 responsible for familiarizing himself with the</p> <p>10 applicable directives pertaining to quality control</p> <p>11 such as DOIs, HOIs, AMC regulations," Air -- "AF</p> <p>12 regulations, TOs and local operating instructions.</p> <p>13 These directives must be complied with by the AF</p> <p>14 quality control inspector and by contractors when</p> <p>15 referenced in contracts or specifications."</p> <p>16 Do you see that, sir?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Did you review any DOIs in formulating</p> <p>19 your expert report, sir, relevant to the Ryan site?</p> <p>20 A. Not that I recall.</p> <p>21 Q. What does "DOI" stand for?</p> <p>22 A. Departmental office instructions, I think.</p> <p style="text-align: right;">Page 604</p>
<p>1 top, "Headquarters Air Material Command,</p> <p>2 Wright-Patterson Air Force Base, Dayton, Ohio" dated</p> <p>3 April -- 2 April, 1951. I'll ask the witness if</p> <p>4 he's familiar with that document.</p> <p>5 A. Yes, I am.</p> <p>6 Q. And you reviewed this document in your</p> <p>7 preparation -- in the preparation of your expert</p> <p>8 opinions in this matter, sir?</p> <p>9 A. I believe I did.</p> <p>10 Q. Okay. And what was the purpose of you</p> <p>11 referencing this document in the formulation of your</p> <p>12 expert opinions, sir?</p> <p>13 A. It spoke to the issue of quality control</p> <p>14 and inspection.</p> <p>15 Q. Okay. And the document states -- well,</p> <p>16 hold on one second.</p> <p>17 To the extent that the document</p> <p>18 references other documentation that an inspector is</p> <p>19 to review in performing his or her duties, did you</p> <p>20 endeavor to review those documents, sir?</p> <p>21 A. Can you point me to a specific document?</p> <p>22 Q. Yeah. Hold on one second. Yeah.</p> <p style="text-align: right;">Page 603</p>	<p>1 Q. What about -- what about HOIs?</p> <p>2 A. Did not review any HOIs.</p> <p>3 Q. What about AMC regulations?</p> <p>4 A. I believe I did review some AMC</p> <p>5 regulations. I don't recall specifically which</p> <p>6 ones.</p> <p>7 Q. Were any of them introduced last week in</p> <p>8 your testimony, sir?</p> <p>9 A. Not that I recall.</p> <p>10 Q. Are any of them cited in your expert</p> <p>11 report, sir?</p> <p>12 A. Not that I recall.</p> <p>13 Q. Okay. I assume "AF" means Air Force</p> <p>14 regulations.</p> <p>15 Which Air Force regulations did you</p> <p>16 review in formulating your opinions in this matter,</p> <p>17 sir?</p> <p>18 A. During the course of my experience, there</p> <p>19 were a number of documents called AFPI, Air Force</p> <p>20 Procurement Instructions, that implemented the ASPR;</p> <p>21 and I reviewed those regularly.</p> <p>22 Q. Were those entered into evidence -- or</p> <p style="text-align: right;">Page 605</p>

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<p>1 were those marked by the government last week in</p> <p>2 your -- in your direct testimony, sir?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Are they referenced in your expert report,</p> <p>5 sir?</p> <p>6 A. Not that I recall.</p> <p>7 Q. What about TOs?</p> <p>8 A. Tech orders.</p> <p>9 Q. Did you review any tech orders related to</p> <p>10 the Ryan site, sir?</p> <p>11 A. Specifically for Ryan, no, sir.</p> <p>12 Q. What about local operating instructions?</p> <p>13 A. I would consider MPDs to be local</p> <p>14 operating instructions.</p> <p>15 Q. Is local operating instructions broader</p> <p>16 than just MPDs? Would they include other documents</p> <p>17 or would it be limited to MPDs?</p> <p>18 A. Depends.</p> <p>19 Q. Okay. What does it depend on, sir?</p> <p>20 A. It depends on the specific locality, I --</p> <p>21 that's my supposition.</p> <p>22 Q. Okay.</p> <p style="text-align: right;">Page 606</p>	<p>1 answered.</p> <p>2 A. I think my deposition stated that I saw no</p> <p>3 evidence that they had, in fact, inspected</p> <p>4 government facilities.</p> <p>5 MR. WINE: Why don't we take a break</p> <p>6 here. Off the record.</p> <p>7 THE WITNESS: Yes.</p> <p>8 THE VIDEOGRAPHER: Going off record.</p> <p>9 Time now is 1:57.</p> <p>10 (Recess from 1:57 p.m. to 2:09 p.m.)</p> <p>11 THE VIDEOGRAPHER: Going back on</p> <p>12 record. Time now is 2:09.</p> <p>13 BY MR. WINE:</p> <p>14 Q. Okay. Returning now, sir, to the title</p> <p>15 vesting provisions and progress payment clauses that</p> <p>16 you testified about last week.</p> <p>17 On Wednesday, you testified that</p> <p>18 "Progress payments are made on fixed-price contracts</p> <p>19 because there is no provision for progress payments</p> <p>20 under cost contracts because under a cost-type"</p> <p>21 contractor -- "contract, the contractor receives</p> <p>22 payments as he incurs those costs in support of a</p> <p style="text-align: right;">Page 608</p>
<p>1 (Sotto voce discussion.)</p> <p>2 BY MR. WINE:</p> <p>3 Q. Now, you can put that document aside, sir.</p> <p>4 Did you read any affidavits offered</p> <p>5 by Mr. Richards or Sakamoto in this matter?</p> <p>6 A. I believe I recall seeing a Richards</p> <p>7 affidavit, deposition or declaration. I don't</p> <p>8 recall seeing one by Mr. Sakamoto.</p> <p>9 Q. Okay. Are you aware of -- of testimony by</p> <p>10 Ryan witnesses, including Mr. Sakamoto and Richards,</p> <p>11 that the government inspected every aspect of</p> <p>12 government programs at the site?</p> <p>13 MR. BARR: Objection,</p> <p>14 mischaracterizes the testimony. The witness'</p> <p>15 testimony speak for themselves.</p> <p>16 A. I don't recall them saying specifically</p> <p>17 that, no.</p> <p>18 BY MR. WINE:</p> <p>19 Q. Sir, what's the basis for your opinion</p> <p>20 that the government did not expect -- inspect</p> <p>21 government equipment at the Ryan site?</p> <p>22 MR. BARR: Objection, asked and</p> <p style="text-align: right;">Page 607</p>	<p>1 specific contract."</p> <p>2 Do you know of any law or regulation</p> <p>3 that precludes a contractor from receiving progress</p> <p>4 payments for cost-based contracts, sir?</p> <p>5 A. I know of nothing in the regulations that</p> <p>6 speaks to the issue of progress payments in</p> <p>7 cost-type contracts.</p> <p>8 Q. Okay. Now -- so, you're unfamiliar with</p> <p>9 any regulations that permit the receipt of progress</p> <p>10 payments for cost contracts if I -- if I understand</p> <p>11 your last answer correct?</p> <p>12 A. Not that I'm aware of.</p> <p>13 Q. Okay. Have you reviewed -- are you</p> <p>14 familiar with FAR 52.232-16, sir?</p> <p>15 A. If you show me that provision, I'll tell</p> <p>16 you whether or not I'm familiar with it.</p> <p>17 Q. Now, before I show you that document, all</p> <p>18 of your testimony regarding progress payments under</p> <p>19 fixed contracts -- fixed-price contracts is new</p> <p>20 opinion that you formulated within the last two</p> <p>21 months, correct, sir?</p> <p>22 MR. BARR: Objection, asked and</p> <p style="text-align: right;">Page 609</p>

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<p>1 answered.</p> <p>2 A. Best of my knowledge, yes.</p> <p>3 (Sotto voce discussion.)</p> <p>4 MR. WINE: Let's go ahead and mark</p> <p>5 it. Let's go ahead and mark, as Jordan Exhibit 252,</p> <p>6 a document.</p> <p>7 (Deposition Exhibit 252 marked.)</p> <p>8 MR. WINE: I'll hand it to the</p> <p>9 witness, to Mr. Barr.</p> <p>10 And while the witness reviews it, I</p> <p>11 will describe it for the -- for the record. I've</p> <p>12 provided the witness a copy of FAR 52.232-16, the</p> <p>13 progress payments clause as it currently exists as</p> <p>14 of August, 2010, taken off of DOD's FAR site and</p> <p>15 produced -- I mean, excuse me -- and -- and copied</p> <p>16 here. The copy was made on October 17th, 2011; and</p> <p>17 it is an eight-page document.</p> <p>18 BY MR. WINE:</p> <p>19 Q. I'll ask you to review that, Mr. Jordan.</p> <p>20 A. (Reviewing document)</p> <p>21 MR. BARR: While he's doing that,</p> <p>22 I'll object to the relevance.</p> <p style="text-align: right;">Page 610</p>	<p>1 BY MR. WINE:</p> <p>2 Q. Mr. Jordan, at your request, I'm handing</p> <p>3 you what is marked as Jordan Exhibit 253 for</p> <p>4 purposes of your testimony. It is -- I will</p> <p>5 represent to you it is Subpart 32.5 of the FAR,</p> <p>6 progress payments based on costs, in which you can</p> <p>7 find 32.502-4. This document was taken from an</p> <p>8 acquisition.gov website, and it is seven pages</p> <p>9 produced for your review in this matter.</p> <p>10 A. (Reviewing document) Okay.</p> <p>11 Q. Were you familiar with 32.502-4 from your</p> <p>12 federal service, sir?</p> <p>13 A. Generally, yes.</p> <p>14 Q. Okay. And turning to 32.502-4 (a)(1),</p> <p>15 small i and small ii -- you see that, sir? The</p> <p>16 small Roman numeral i and Roman numeral ii? I can</p> <p>17 point it to you if it would help you find it.</p> <p>18 A. Okay.</p> <p>19 Q. These two right here, one -- and let the</p> <p>20 record reflect that I've highlighted small Roman</p> <p>21 numeral i and small Roman numeral ii in 32.502-4.</p> <p>22 Do you see that, sir?</p> <p style="text-align: right;">Page 612</p>
<p>1 A. (Reviewing document) Okay. I've reviewed</p> <p>2 this document.</p> <p>3 BY MR. WINE:</p> <p>4 Q. Have you reviewed -- you are familiar</p> <p>5 with -- with this regulation as a result of your --</p> <p>6 or -- or the predecessors to this regulation as a</p> <p>7 result of your decades-long federal contracting</p> <p>8 experience, sir?</p> <p>9 A. Before I can offer an opinion on it, I'd</p> <p>10 have to review 32.502-4A. It says, "As prescribed</p> <p>11 in 32.502-4A, insert the following clause."</p> <p>12 And before I can offer an opinion or</p> <p>13 use this clause, I'd have to refer back to that</p> <p>14 opinion --</p> <p>15 Q. Are you --</p> <p>16 A. -- or that provision.</p> <p>17 Q. Are you familiar, sitting here today, with</p> <p>18 what that provision is, sir?</p> <p>19 A. I am not.</p> <p>20 (Sotto voce discussion.)</p> <p>21 (Deposition Exhibit 253 marked.)</p> <p>22</p> <p style="text-align: right;">Page 611</p>	<p>1 A. Yes.</p> <p>2 Q. And in fact, this regulation, 32.502-4,</p> <p>3 (a)(1) -- I'm not sure I have an answer to my prior</p> <p>4 question -- were you familiar with this regulation</p> <p>5 during your federal service, sir?</p> <p>6 A. Generally, yes.</p> <p>7 Q. And is it generally consistent with its</p> <p>8 predecessor versions of this regulation?</p> <p>9 A. Best of my recollection, yes.</p> <p>10 Q. Okay. And this regulation instructs the</p> <p>11 inclusion of the contract clause 52.232-16 in</p> <p>12 certain instances, correct so far?</p> <p>13 A. It specifically says, "Solicitations that</p> <p>14 may result in contracts providing for progress</p> <p>15 payments based on costs."</p> <p>16 Q. Okay. And -- and what is that type of a</p> <p>17 contract, sir?</p> <p>18 A. There are two different methods for</p> <p>19 progress payments. One is a percentage based on</p> <p>20 cost. The other is based on a percentage of</p> <p>21 completion of the product.</p> <p>22 But again, it does not specifically</p> <p style="text-align: right;">Page 613</p>

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<p>1 state that the use for -- are applicable to</p> <p>2 cost-type contracts.</p> <p>3 Q. Okay. It does say -- it does delineate</p> <p>4 fixed-price contracts in small Roman numeral ii,</p> <p>5 correct?</p> <p>6 MR. BARR: Objection, the document</p> <p>7 speaks for itself, vague and ambiguous.</p> <p>8 A. Yes.</p> <p>9 BY MR. WINE:</p> <p>10 Q. Okay. And is it your testimony, sir, that</p> <p>11 small Roman numeral i does not encompass cost</p> <p>12 contracts -- cost-based contracts?</p> <p>13 MR. BARR: Objection, asked and</p> <p>14 answered.</p> <p>15 A. That is my opinion, yes.</p> <p>16 BY MR. WINE:</p> <p>17 Q. Okay. So, are you expressing an opinion</p> <p>18 in this matter, sir, that Ryan would have needed to</p> <p>19 maintain separate chemical processing tanks or</p> <p>20 degreasing equipment for different customers in</p> <p>21 order to bill the government for progress payments</p> <p>22 on -- in order to assess against progress payments</p> <p style="text-align: right;">Page 614</p>	<p>1 was that you'd have to review the facts and</p> <p>2 circumstances pertaining to such claims for progress</p> <p>3 payments to determine whether segregation was</p> <p>4 necessary.</p> <p>5 MR. BARR: Objection.</p> <p>6 BY MR. WINE:</p> <p>7 Q. And I'm asking you now whether you</p> <p>8 performed that analysis in this matter based on what</p> <p>9 you know about this case?</p> <p>10 MR. BARR: Objection, misstates the</p> <p>11 witness' prior testimony.</p> <p>12 A. I did not perform that kind of analysis.</p> <p>13 BY MR. WINE:</p> <p>14 Q. Are you capable of performing it now?</p> <p>15 A. Since I don't have all of the facts and</p> <p>16 circumstances relative to how they segregated</p> <p>17 their -- their tanks, no.</p> <p>18 Q. I take it from your answer, sir, that</p> <p>19 there may be facts and circumstances that would not</p> <p>20 require the physical segregation of chemicals, tanks</p> <p>21 and other processes; is that correct?</p> <p>22 MR. BARR: Objection, hypothetical,</p> <p style="text-align: right;">Page 616</p>
<p>1 chemicals used in those processes on government</p> <p>2 contracts?</p> <p>3 MR. BARR: Objection, vague and</p> <p>4 ambiguous, confusing.</p> <p>5 A. I think I'd have to review the facts</p> <p>6 and -- and circumstances pertaining to such claims</p> <p>7 for progress payments for those kinds of chemicals;</p> <p>8 but in my opinion, they would, in all likelihood,</p> <p>9 have to maintain separate processing tanks.</p> <p>10 BY MR. WINE:</p> <p>11 Q. Did you formulate an opinion in this</p> <p>12 matter given the facts and circumstances as you know</p> <p>13 it for this case?</p> <p>14 A. I saw --</p> <p>15 MR. BARR: Objection, vague and</p> <p>16 ambiguous, overly broad.</p> <p>17 A. I think I testified last week that I saw</p> <p>18 no documentation that they had, in fact, maintained</p> <p>19 separate processing tanks.</p> <p>20 BY MR. WINE:</p> <p>21 Q. But a different question, sir.</p> <p>22 My question is: Your prior answer</p> <p style="text-align: right;">Page 615</p>	<p>1 calls for speculation.</p> <p>2 A. In theory, but not in practice.</p> <p>3 BY MR. WINE:</p> <p>4 Q. Now, in reviewing your expert report, I</p> <p>5 didn't see any mention to the lack of documentation</p> <p>6 regarding requests for progress payments by Ryan in</p> <p>7 your -- your expert report.</p> <p>8 That's because it's a new opinion,</p> <p>9 correct, sir?</p> <p>10 MR. BARR: Objection, asked and</p> <p>11 answered. We've been over this.</p> <p>12 A. The best of my recollection, my -- my</p> <p>13 expert report does not speak to the issue of</p> <p>14 progress payments.</p> <p>15 BY MR. WINE:</p> <p>16 Q. And it's -- it's your view that without</p> <p>17 supporting documentation, you cannot offer an</p> <p>18 opinion whether the government received title to or</p> <p>19 lien to any material, including chemicals used in</p> <p>20 the processes at the facility?</p> <p>21 MR. BARR: Objection, misstates the</p> <p>22 witness' prior testimony.</p> <p style="text-align: right;">Page 617</p>

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<p>1 A. I saw no documentation that stated</p> <p>2 specifically that the government had, in fact,</p> <p>3 assumed title and/or a lien against those kinds of</p> <p>4 chemicals.</p> <p>5 BY MR. WINE:</p> <p>6 Q. Now, you've testified that given the</p> <p>7 passage of time in this case, the record in the</p> <p>8 matter is incomplete; and yet, in formulating your</p> <p>9 expert report and in testifying in response to</p> <p>10 questions from Mr. Barr, you were willing to make</p> <p>11 certain inferences even in the absence of</p> <p>12 documentation.</p> <p>13 Is that a correct assessment on my</p> <p>14 part, sir?</p> <p>15 MR. BARR: Objection, overly broad,</p> <p>16 vague and ambiguous, argumentative.</p> <p>17 A. I have made certain instances in some</p> <p>18 situations that, based upon my review of regulations</p> <p>19 and contracts that were available, that it was a</p> <p>20 logical conclusion that similar provisions had been</p> <p>21 included in those contracts that were no longer</p> <p>22 available for review.</p> <p style="text-align: right;">Page 618</p>	<p>1 regulations, I was able to make those kinds of</p> <p>2 inferences.</p> <p>3 In the situation that you just</p> <p>4 alluded to, there is no compendium of documentation</p> <p>5 that speaks to that specific issue from which I can</p> <p>6 make an inference.</p> <p>7 BY MR. WINE:</p> <p>8 Q. So, instead of offering the opinion that</p> <p>9 you've seen no evidence on something, why offer any</p> <p>10 opinion at all? Why not just remain silent on a</p> <p>11 topic because you haven't seen documentation one way</p> <p>12 or the other?</p> <p>13 MR. BARR: Same objections.</p> <p>14 A. I think I had the right to express an</p> <p>15 opinion based upon the evidence that I saw and which</p> <p>16 I did.</p> <p>17 BY MR. WINE:</p> <p>18 Q. Or evidence that you didn't see?</p> <p>19 A. I -- I saw no evidence on some situations;</p> <p>20 and based upon that lack of evidence, I think I am</p> <p>21 entitled to draw an opinion.</p> <p>22 Q. Now, you recall on Wednesday testifying</p> <p style="text-align: right;">Page 620</p>
<p>1 BY MR. WINE:</p> <p>2 Q. Why is it fair or possible to draw</p> <p>3 inferences in the absent -- absence of documentation</p> <p>4 in certain instances but not in others?</p> <p>5 MR. BARR: Same objections.</p> <p>6 A. I don't understand the question.</p> <p>7 BY MR. WINE:</p> <p>8 Q. Well, there are certain instances,</p> <p>9 questions specifically propounded by me and in</p> <p>10 certain other areas in your expert report where you</p> <p>11 offer an opinion that you can't conclude a matter</p> <p>12 because you've not seen any documentation.</p> <p>13 And my question, sir, is: Why are</p> <p>14 you willing or able to form an opinion on behalf of</p> <p>15 the United States in the admitted absence of</p> <p>16 documentation there, but unwilling to formulate an</p> <p>17 opinion on other matters because there's an absence</p> <p>18 of documentation?</p> <p>19 MR. BARR: Same objections.</p> <p>20 A. Because of the compendium of regulations</p> <p>21 and the consistency between one iteration of those</p> <p>22 regulations and subsequent iterations of the</p> <p style="text-align: right;">Page 619</p>	<p>1 about a collection of Ryan annual reports, correct,</p> <p>2 sir?</p> <p>3 A. Stockholder reports, yes, sir.</p> <p>4 Q. Okay. And you stated that on some of the</p> <p>5 annual reports, they included inventory less</p> <p>6 progress payments; and for those years that they had</p> <p>7 received progress payments and for years they had</p> <p>8 not received progress payments, they did not -- back</p> <p>9 up. I think I missed a word.</p> <p>10 On some of the annual reports, they</p> <p>11 included inventory less progress payments; and for</p> <p>12 those years, they had received progress payments.</p> <p>13 And for the years they had not received progress</p> <p>14 payments, they did not make that deduction from the</p> <p>15 value of the inventory.</p> <p>16 Do you recall that testimony, sir?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Are you aware of any requirement, SEC</p> <p>19 regulation or other rule obligating Ryan for the</p> <p>20 period of time that you reviewed and summarized its</p> <p>21 stockholder reports that required Ryan to report out</p> <p>22 to its stockholders specificity of its financials,</p> <p style="text-align: right;">Page 621</p>

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<p>1 including progress payments?</p> <p>2 MR. BARR: Same -- objection, calls</p> <p>3 for a legal analysis, beyond the scope of the</p> <p>4 witness' opinions, reports and testimony.</p> <p>5 A. I know of no SEC regulation that speaks to</p> <p>6 that issue.</p> <p>7 BY MR. WINE:</p> <p>8 Q. Now, none of these stockholder reports</p> <p>9 were included in your expert report, correct?</p> <p>10 MR. BARR: Objection, those reports</p> <p>11 speak for themselves.</p> <p>12 A. Not that I recall.</p> <p>13 BY MR. WINE:</p> <p>14 Q. Okay. And it's fair, based on your review</p> <p>15 of those stockholder reports, that they did not</p> <p>16 include or contain a full accounting of Ryan's</p> <p>17 payments and costs for the given year for which</p> <p>18 they're reported, correct?</p> <p>19 MR. BARR: Objection, vague and</p> <p>20 confusing, ambiguous.</p> <p>21 A. I think the reports speak for themselves</p> <p>22 as to what they included and what they didn't</p> <p style="text-align: right;">Page 622</p>	<p>1 stockholder report, that means that Ryan did not</p> <p>2 receive progress payments in that given year?</p> <p>3 A. I think that is a logical conclusion, yes.</p> <p>4 Q. Okay. Is it -- what qualifies you to draw</p> <p>5 an opinion regarding the financials of the company?</p> <p>6 MR. BARR: Objection.</p> <p>7 A. As I have testified before, I spent a</p> <p>8 large part of my career reviewing cost-type data and</p> <p>9 financial-type data in the evaluation of</p> <p>10 contractors' proposals and the evaluation of</p> <p>11 contractor responsibility.</p> <p>12 So, I think that qualifies me to make</p> <p>13 those kinds of conclusions.</p> <p>14 BY MR. WINE:</p> <p>15 Q. And in how many of those instances where</p> <p>16 you were performing those as a federal official did</p> <p>17 you rely on the stockholder report of a company to</p> <p>18 draw those conclusions?</p> <p>19 A. I can't tell you a specific number.</p> <p>20 Q. Any of them?</p> <p>21 A. Yes, there were some; but I can't tell you</p> <p>22 a number.</p> <p style="text-align: right;">Page 624</p>
<p>1 include.</p> <p>2 BY MR. WINE:</p> <p>3 Q. They contain a summary of the financials</p> <p>4 of the company for that year, correct?</p> <p>5 MR. BARR: Objection, documents speak</p> <p>6 for themselves.</p> <p>7 A. That's my opinion, yes.</p> <p>8 BY MR. WINE:</p> <p>9 Q. Okay. And -- and so, do you know, sir,</p> <p>10 whether Ryan uniformly reported in all of its</p> <p>11 stockholder reports receipt of progress payments on</p> <p>12 an annualized basis?</p> <p>13 MR. BARR: Objection, the documents</p> <p>14 speak for themselves.</p> <p>15 A. I did not see a detailed year-by-year</p> <p>16 summary of those financials.</p> <p>17 My opinion is based upon those annual</p> <p>18 reports that I did review.</p> <p>19 BY MR. WINE:</p> <p>20 Q. Okay. So, are you concluding in your</p> <p>21 opinion, sir, that in a year where there is not</p> <p>22 reference to progress payments in the Ryan</p> <p style="text-align: right;">Page 623</p>	<p>1 Q. In point of fact, the government requires</p> <p>2 more detailed financial data to draw those</p> <p>3 conclusions, don't they?</p> <p>4 A. We had significantly more data. I didn't</p> <p>5 make that -- conclusions based solely upon a</p> <p>6 stockholder report, you're right.</p> <p>7 Q. Okay. So, in this instance, you're</p> <p>8 drawing conclusions based -- regarding the company's</p> <p>9 receipt of progress payments in a given year solely</p> <p>10 on a stockholder report, correct?</p> <p>11 MR. BARR: Objection, misstates the</p> <p>12 witness' prior testimony.</p> <p>13 A. My conclusion relative to those years was</p> <p>14 based upon my review and analysis of those</p> <p>15 stockholder reports.</p> <p>16 BY MR. WINE:</p> <p>17 Q. And that review and analysis is</p> <p>18 inconsistent with the way you performed your</p> <p>19 analysis when you were a federal official charged</p> <p>20 with conducting that kind of analysis, correct?</p> <p>21 MR. BARR: Objection, argumentative,</p> <p>22 contrary to witness' prior testimony.</p> <p style="text-align: right;">Page 625</p>

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<p>1 A. I wouldn't say it's inconsistent. It is a</p> <p>2 piece of the data that was reviewed during my tenure</p> <p>3 as a government executive, but I would not</p> <p>4 necessarily call it inconsistent.</p> <p>5 BY MR. WINE:</p> <p>6 Q. So, instead of drawing the opinion that</p> <p>7 Ryan didn't receive progress payments in years for</p> <p>8 which the stockholder report doesn't make mention of</p> <p>9 them, why didn't you testify last week that you had</p> <p>10 insufficient data to draw a conclusion one way or</p> <p>11 another as you have on a variety of other matters?</p> <p>12 MR. BARR: Objection, argumentative,</p> <p>13 vague and ambiguous, overly broad.</p> <p>14 A. I think if you go back and read all of the</p> <p>15 stockholder reports, you will also see some</p> <p>16 statements by Mr. Ryan that they financed their</p> <p>17 operation through private loans.</p> <p>18 So, you know, other than just the</p> <p>19 financial summary, I think there's information that</p> <p>20 helped me make those conclusions.</p> <p>21 BY MR. WINE:</p> <p>22 Q. Does the receipt of financing via a</p> <p style="text-align: right;">Page 626</p>	<p>1 BY MR. WINE:</p> <p>2 Q. It's true, sitting here today, sir, that</p> <p>3 you don't know one way or the other in the absence</p> <p>4 of more -- more thorough documentation?</p> <p>5 MR. BARR: Objection, argumentative,</p> <p>6 misstates the witness' prior testimony.</p> <p>7 A. Since they saw a necessity to deduct the</p> <p>8 value of progress payments from some years and not</p> <p>9 other years, there is no other logical reason that I</p> <p>10 can think of that would make them do that kind of</p> <p>11 differentiation between years.</p> <p>12 BY MR. WINE:</p> <p>13 Q. Did you review any of the company's</p> <p>14 financials regarding what it did and did not deduct</p> <p>15 for for those years in which a stockholder report</p> <p>16 was silent on progress payments?</p> <p>17 MR. BARR: Objection, vague and</p> <p>18 ambiguous, confusing.</p> <p>19 A. Other than that which is in the annual</p> <p>20 reports to stockholders, no.</p> <p>21 BY MR. WINE:</p> <p>22 Q. It's not possible to do an audited</p> <p style="text-align: right;">Page 628</p>
<p>1 private vehicle preclude a contractor from receiving</p> <p>2 progress payments in support of their government</p> <p>3 contracting activity?</p> <p>4 A. Not necessarily.</p> <p>5 Q. Okay. In point of fact, a government</p> <p>6 contractor can receive and apply progress payments</p> <p>7 to government contracts at the same time it's</p> <p>8 receiving financing from a third-party private</p> <p>9 lender, correct?</p> <p>10 A. In theory, yes.</p> <p>11 Q. Well, in application as well, correct?</p> <p>12 A. Yes.</p> <p>13 Q. You had direct experience with that as a</p> <p>14 federal official, didn't you?</p> <p>15 A. Yes.</p> <p>16 Q. So, is it possible, sitting here today,</p> <p>17 sir, that Ryan received progress payments in those</p> <p>18 years in which the stock -- stockholder report was</p> <p>19 silent as to progress payments?</p> <p>20 MR. BARR: Objection, calls for</p> <p>21 speculation.</p> <p>22 A. Probably not.</p> <p style="text-align: right;">Page 627</p>	<p>1 accounting of a company based on the summaries of</p> <p>2 financials contained in a stockholder report, is it?</p> <p>3 MR. BARR: Objection, argumentative,</p> <p>4 vague and ambiguous, relevance.</p> <p>5 A. I don't know of any DCAA audits of the</p> <p>6 annual reports to stockholders. That's between the</p> <p>7 stockholders and the company.</p> <p>8 BY MR. WINE:</p> <p>9 Q. Okay. So, if you're going to opine on a</p> <p>10 company's receipt of progress payments in a given</p> <p>11 year, which would be a preferable source, the actual</p> <p>12 books and records of the company or a summary of</p> <p>13 financials contained in a stockholder report?</p> <p>14 MR. BARR: Objection, calls for</p> <p>15 speculation, improper hypothetical.</p> <p>16 A. If I had access to the detailed records, I</p> <p>17 would prefer to see the detailed records.</p> <p>18 BY MR. WINE:</p> <p>19 Q. Did you ask the government for those</p> <p>20 detailed records?</p> <p>21 A. I did not specifically ask the government</p> <p>22 for those kinds of records, but I did not see them</p> <p style="text-align: right;">Page 629</p>

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<p>1 in the volume of documents that I reviewed.</p> <p>2 Q. Did you ask that specific searches be</p> <p>3 conducted for those types of detailed records for</p> <p>4 the years in which the stockholder agreement was</p> <p>5 silent?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Did you run any queries in the DOJ</p> <p>8 database in the course of the last two months?</p> <p>9 A. In the last two months? I ran several,</p> <p>10 yes.</p> <p>11 Q. Okay. And what queries specifically</p> <p>12 related to your new opinions on progress payments</p> <p>13 did you run?</p> <p>14 A. None.</p> <p>15 MR. WINE: Why don't we stop there</p> <p>16 for the day.</p> <p>17 THE VIDEOGRAPHER: This marks the end</p> <p>18 of the deposition. Time off record now is 2:36.</p> <p>19 (Deposition adjourned at 2:36 p.m.)</p> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: right;">Page 630</p>	<p>1 Tommy Jordan c/o</p> <p>2 DICKSTEIN SHAPIRO, L.L.P.</p> <p>3 1825 Eye Street NW</p> <p>4 Washington, D.C. 20006-5403</p> <p>5</p> <p>6 Case: TDY Holdings v. United States of America</p> <p>7 Date of deposition: 10/19/11</p> <p>8 Deponent: Tommy Jordan</p> <p>9</p> <p>10 Please be advised that the transcript in the above</p> <p>11 referenced matter is now complete and ready for signature.</p> <p>12 The deponent may come to this office to sign the transcript,</p> <p>13 a copy may be purchased for the witness to review and sign,</p> <p>14 or the deponent and/or counsel may waive the option of signing.</p> <p>15 Please advise us of the option selected.</p> <p>16 Please forward the errata sheet and the original signed</p> <p>17 signature page to counsel noticing the deposition, noting the applicable</p> <p>18 time period allowed for such by the governing Rules of Procedure.</p> <p>19 If you have any questions, please do not hesitate to call our office at</p> <p>20 (202)-232-0646.</p> <p>21 Sincerely,</p> <p>22</p> <p>23 Digital Evidence Group</p> <p>24 Copyright 2011 Digital Evidence Group</p> <p>25 Copying is forbidden, including electronically, absent express written consent</p> <p style="text-align: right;">Page 632</p>
<p>1 CERTIFICATE OF SHORTHAND REPORTER</p> <p>2 I, Marcy Clark, Certified Shorthand</p> <p>3 Reporter, the officer before whom the foregoing</p> <p>4 deposition was taken, do hereby certify that the</p> <p>5 foregoing transcript is a true and correct record of</p> <p>6 the testimony given; that said testimony was taken</p> <p>7 by me stenographically and thereafter reduced to</p> <p>8 typewriting under my supervision; and that I am</p> <p>9 neither counsel for, related to, nor employed by any</p> <p>10 of the parties to this case and have no interest,</p> <p>11 financial or otherwise, in its outcome.</p> <p>12 Certified to by me on this _____ day</p> <p>13 of _____, 2011.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19 _____</p> <p>20 MARCY CLARK, CSR, CLR</p> <p>21 Texas Certified Shorthand Reporter</p> <p>22 CSR No. 4935</p> <p>Certified LiveNote Reporter</p> <p>Expiration Date: 12/31/2012</p> <p style="text-align: right;">Page 631</p>	<p>1 Digital Evidence Group, L.L.C.</p> <p>2 1299 Pennsylvania Ave NW, Suite 1130E</p> <p>3 Washington, D.C. 20004</p> <p>4 (202) 232-0646</p> <p>5</p> <p>6 SIGNATURE PAGE</p> <p>7</p> <p>8 Case Name: TDY Holdings v. United States of America</p> <p>9 Witness Name: Tommy Jordan</p> <p>10 Deposition Date: 10/19/11</p> <p>11 I do hereby acknowledge that I have read</p> <p>12 and examined the foregoing pages</p> <p>13 of the transcript of my deposition and that:</p> <p>14 (Check appropriate box):</p> <p>15 () The same is a true, correct and</p> <p>16 complete transcription of the answers given by</p> <p>17 me to the questions therein recorded.</p> <p>18 () Except for the changes noted in the</p> <p>19 attached Errata Sheet, the same is a true,</p> <p>20 correct and complete transcription of the</p> <p>21 answers given by me to the questions therein</p> <p>22 recorded.</p> <p>23 _____</p> <p>24 DATE WITNESS SIGNATURE</p> <p style="text-align: right;">Page 633</p>

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

TDY HOLDINGS, LLC, and	§
TDY INDUSTRIES, INC.	§
	§
Plaintiffs,	§
	§
VS.	§ Case No. 07cv0787 JAH
	§
UNITED STATES OF AMERICA,	§
UNITED STATES DEPARTMENT	§
OF DEFENSE, and ROBERT M.	§
GATES, in his official	§
capacity as SECRETARY OF	§
DEFENSE	§
	§
Defendants.	§

Videotaped Deposition of
TOMMY B. JORDAN
San Antonio, Texas
Friday, October 21, 2011
9:22 a.m.

Volume 5

Reported by: Marcy Clark, CSR, CLR

DIGITAL EVIDENCE GROUP
1299 Pennsylvania Avenue, NW Suite 1130E
Washington, DC 20004
(202) 232-0646

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3	TOMMY B. JORDAN	3	October 21, 2011
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5	Held at the offices of:	5	APPEARANCES 637
6	Koole Court Reporters of Texas	6	
7	711 Navarro Street, Suite 101	7	PROCEEDINGS 639
8	San Antonio, Texas 78205	8	
9	(210) 558-9484	9	EXAMINATION OF TOMMY B. JORDAN:
10		10	
11		11	BY MR. WINE 639
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13	Taken pursuant to notice, before Marcy Clark,	13	BY MR. WINE 698
14	Certified Shorthand Reporter and Certified LiveNote	14	
15	Reporter in and for the State of Texas.	15	CERTIFICATE 708
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1	APPEARANCES	1	PROCEEDINGS
2	ON BEHALF OF THE PLAINTIFFS:	2	THE VIDEOGRAPHER: This is the start
3	Bradley D. Wine	3	of the deposition of Tommy B. Jordan, Volume 5.
4	Michael C. Mateer	4	Today is Friday, October 21st, 2011. Time on record
5	DICKSTEIN SHAPIRO, L.L.P.	5	now is 9:22.
6	1825 Eye Street NW	6	TOMMY B. JORDAN,
7	Washington, D.C. 20006-5403	7	having been previously sworn, continued to testify
8	(202) 420-3607	8	as follows:
9		9	EXAMINATION (Cont.)
10	ON BEHALF OF THE DEFENDANTS:	10	BY MR. WINE:
11	Lewis M. Barr	11	Q. Good morning, Mr. Jordan.
12	U.S. DEPARTMENT OF JUSTICE	12	A. Good morning.
13	601 D Street NW, Suite 8000	13	Q. Remind you: You are still under oath for
14	Washington, D.C. 20004	14	this continuation, I believe, of the last day of
15	(202) 514-9645	15	your testimonial deposition.
16		16	I want to begin with an exhibit that
17	VIDEOGRAPHER:	17	Mr. Barr showed you last Monday.
18	Alex Segovia, Videographer	18	MR. WINE: I'm handing the -- the
19		19	witness an exhibit that was marked Jordan Exhibit 21
20	ALSO PRESENT:	20	during the first day of his testimonial deposition.
21	Robert Zoch	21	BY MR. WINE:
22	John M. Tishok	22	Q. Ask you just briefly to review the
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<p>1 document, sir, to confirm that you reviewed this in</p> <p>2 the preparation of your expert opinions and</p> <p>3 testified about it during your testimonial</p> <p>4 deposition last week.</p> <p>5 A. (Reviewing document) Yes, I did.</p> <p>6 Q. And is this one of the releases that you</p> <p>7 considered in the portion of your expert report</p> <p>8 where you say that the Court should consider</p> <p>9 indemnifications, releases and similar clauses in</p> <p>10 reviewing this matter?</p> <p>11 A. One of many, yes.</p> <p>12 Q. Now, if you'll turn to Page 3677 in the</p> <p>13 bottom right-hand corner, you'll see Paragraph C</p> <p>14 about the middle of the page, sir.</p> <p>15 A. Yes.</p> <p>16 Q. I'll read it for you.</p> <p>17 It says, "Upon the payment of said</p> <p>18 sum of \$852,432.43 as aforesaid, all rights and</p> <p>19 liabilities of the parties under the contracts and</p> <p>20 under the act insofar as it pertains to the</p> <p>21 contracts shall cease forthwith and be forever</p> <p>22 released." And then there's an exceptions -- there</p> <p style="text-align: right;">Page 640</p>	<p>1 A. Yes, I do.</p> <p>2 Q. And did you consider that clause in the</p> <p>3 formulation of your expert opinions in this matter,</p> <p>4 sir?</p> <p>5 A. Yes, I did.</p> <p>6 Q. Okay. You can put that document to the</p> <p>7 side.</p> <p>8 I'm going to show you another</p> <p>9 exhibit. This one was marked Exhibit 234 for</p> <p>10 purposes of your testimony last week, I believe last</p> <p>11 Friday.</p> <p>12 As the witness is reviewing the</p> <p>13 document, the document was previously marked as</p> <p>14 Jordan Exhibit 234 by the government in this matter.</p> <p>15 A. Okay.</p> <p>16 Q. Now, Mr. Jordan, did you review this</p> <p>17 document in the formulation of your opinions in this</p> <p>18 case?</p> <p>19 A. Yes, I did.</p> <p>20 Q. And you reviewed this in conjunction with</p> <p>21 your opinions regarding the Big Safari matter,</p> <p>22 correct?</p> <p style="text-align: right;">Page 642</p>
<p>1 are -- there are exception clauses underneath that.</p> <p>2 Do you see that clause, sir?</p> <p>3 A. Yes, I do.</p> <p>4 Q. Now, do you understand the claim -- did</p> <p>5 you consider that language in the formulation of</p> <p>6 your opinions, sir?</p> <p>7 A. I believe I did, yes.</p> <p>8 Q. Do you consider the claims that TDY is</p> <p>9 bringing in this matter to be claims under the</p> <p>10 contracts and/or under the act that is referenced in</p> <p>11 Paragraph C?</p> <p>12 A. Not necessarily.</p> <p>13 Q. And if you'll turn to Page 3678, one of</p> <p>14 the exceptions, Clause No. 3, it says, certain of</p> <p>15 the claims excepted per the prior paragraph that we</p> <p>16 just read under paragraph -- Subparagraph 3 reads,</p> <p>17 "Claims by the contractor against the government</p> <p>18 which were based upon responsibility of the</p> <p>19 contractor to third parties and which involve costs</p> <p>20 reimbursable under the contracts, but which are not</p> <p>21 known to the contractor."</p> <p>22 Do you see that, sir?</p> <p style="text-align: right;">Page 641</p>	<p>1 A. That is correct.</p> <p>2 Q. And what opinions regarding the Big Safari</p> <p>3 matter are you offering in this case?</p> <p>4 MR. BARR: Objection, asked and</p> <p>5 answered.</p> <p>6 A. As I sit here today, I can't specifically</p> <p>7 recall which opinion is -- is limited to Big Safari.</p> <p>8 BY MR. WINE:</p> <p>9 Q. Okay. Turn to Page 5368 in the bottom</p> <p>10 right-hand corner.</p> <p>11 A. Okay.</p> <p>12 Q. And at that page -- let me just make sure</p> <p>13 you're on the right page because I think that might</p> <p>14 be 5366.</p> <p>15 A. It's 68.</p> <p>16 Q. Turn to the third page in the compilation.</p> <p>17 A. 70?</p> <p>18 Q. You have a different Bates-labeled version</p> <p>19 but we'll -- we'll go with -- actually, let me use</p> <p>20 yours.</p> <p>21 (Sotto voce discussion.)</p> <p>22</p> <p style="text-align: right;">Page 643</p>

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<p>1 BY MR. WINE:</p> <p>2 Q. There you go, Mr. Jordan. I'll represent</p> <p>3 for the record that the document, as it was</p> <p>4 produced, contain two pages, two three -- 5366 and</p> <p>5 5367, as it was produced to the government. Those</p> <p>6 two pages are missing from the version that was</p> <p>7 marked by the government as an exhibit last week,</p> <p>8 but we'll begin with 368. And I apologize for the</p> <p>9 confusion.</p> <p>10 If you look at Paragraph No. 2 in the</p> <p>11 left-hand column, 2(C), "What Constitutes a Big</p> <p>12 Safari Project," and you go to the middle of that</p> <p>13 paragraph, it reads, "Projects designated for Big</p> <p>14 Safari management will be directed only by the</p> <p>15 Office of the Secretary of Defense, Secretary or</p> <p>16 Under Secretary of the Air Force, Chief of Staff or</p> <p>17 Vice Chief of Staff" of the Deputy Chief of Staff,</p> <p>18 Systems and -- "or the Deputy Chief of Staff" --</p> <p>19 excuse me -- "Systems and Logistics, through the</p> <p>20 Director of Maintenance-Engineering to the Air Force</p> <p>21 Logistics Command." And then it says, "Each project</p> <p>22 so directed must," and there's a list of items.</p> <p style="text-align: right;">Page 644</p>	<p>1 facility in conjunction with the B-58, that I did</p> <p>2 see the RB-57 aircraft sitting on the runway.</p> <p>3 Q. And through your engagement as an expert</p> <p>4 witness in this matter, sir, you're also familiar</p> <p>5 that there was a Big Safari -- there was Big Safari</p> <p>6 activity at the Ryan site, correct?</p> <p>7 A. That is correct.</p> <p>8 Q. Okay. Now, if you look at the project</p> <p>9 descriptions or project identifiers under the clause</p> <p>10 that I just read to you, sir, (A) says, "Be of</p> <p>11 sufficient importance and priority to warrant</p> <p>12 preferential treatment, quick reaction and</p> <p>13 extraordinary procurement action."</p> <p>14 Do you see that?</p> <p>15 A. Yes, I do.</p> <p>16 Q. Did you consider that language, sir, in</p> <p>17 the formulation of your opinions regarding this</p> <p>18 matter?</p> <p>19 A. I considered this regulation.</p> <p>20 Q. Okay. And did you consider that language</p> <p>21 in particular?</p> <p>22 A. I can't specifically point to my opinions</p> <p style="text-align: right;">Page 646</p>
<p>1 Before we go on to the list of items,</p> <p>2 were you familiar with that language, sir?</p> <p>3 A. I reviewed this document, yes.</p> <p>4 Q. Okay. Was that consistent with your</p> <p>5 understanding of one of the preconditions to -- to</p> <p>6 designate a program under the Big Safari program?</p> <p>7 A. Basically --</p> <p>8 MR. BARR: Objection, vague and</p> <p>9 ambiguous.</p> <p>10 A. Based upon this document, that is a</p> <p>11 precondition, yes.</p> <p>12 BY MR. WINE:</p> <p>13 Q. Did you review any other materials that</p> <p>14 suggested otherwise, sir?</p> <p>15 A. Not that I recall.</p> <p>16 Q. Do you have any other reason beyond</p> <p>17 documents to believe otherwise, sir?</p> <p>18 A. I think I testified the other day that I</p> <p>19 have no personal knowledge of Big Safari with the</p> <p>20 exception of the fact that one of the Big Safari</p> <p>21 programs was performed by General Dynamics in their</p> <p>22 Fort Worth facility, and when I was visiting that</p> <p style="text-align: right;">Page 645</p>	<p>1 and which one is -- is -- hinges upon this</p> <p>2 particular paragraph; but, yes, I did consider this</p> <p>3 regulation in its entirety.</p> <p>4 Q. Okay. Let's look at (D). I just want to</p> <p>5 make sure I exhaust this, sir.</p> <p>6 (D) says, "Require continuing unique</p> <p>7 logistics support by AFLC and/or the modification</p> <p>8 contractor because of the peculiar or non-standard</p> <p>9 equipment utilized."</p> <p>10 Do you see that, sir?</p> <p>11 A. Yes, I do.</p> <p>12 Q. Do you know what peculiar or non-standard</p> <p>13 equipment, if any, was utilized at the Ryan site?</p> <p>14 A. Specifically, I do not know.</p> <p>15 Q. Would that information be classified under</p> <p>16 the Big Safari program, sir?</p> <p>17 MR. BARR: Objection, calls for</p> <p>18 speculation.</p> <p>19 A. May or may not.</p> <p>20 BY MR. WINE:</p> <p>21 Q. Okay. And then (E) states, "Require the</p> <p>22 security safeguards which apply to all" covert --</p> <p style="text-align: right;">Page 647</p>

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<p>1 "covert intelligence collectors." 2 Do you see that? 3 A. Yes, I do. 4 Q. And did you consider that in the 5 formulation of your opinions as well? 6 A. I considered this regulation in its 7 entirety. 8 Q. Okay. Let's go to 3(C) just below that in 9 the middle of the paragraph. It says, "In addition, 10 the complexity of most equipment involved in the 11 various projects requires the selection and 12 retention of the best qualified officer, airman and 13 civilian personnel available." 14 And then it says, "AFRs 205-1 and 15 205-4 will be followed explicitly and a separate 16 Security Guide will be distributed by the Director 17 of Operations, Headquarters USAF." 18 Do you see that? 19 A. Yes, I do. 20 Q. Did you review in your materials, sir, the 21 separate security guard -- security guide that was 22 distributed by the director of operations in the</p> <p style="text-align: right;">Page 648</p>	<p>1 Systems Command Responsibilities." (B) "Provide 2 engineering assistance as required in matters beyond 3 the responsibility or capability of AFLC." 4 Do you see that, sir? 5 A. Yes, I do. 6 Q. Do you know what engineering assistance 7 was provided at the Ryan site in support -- if any, 8 in support of Big Safari operations? 9 MR. BARR: Objection, assumes facts 10 not in evidence. 11 A. I do not specifically, no. 12 BY MR. WINE: 13 Q. Was it customary for the United States Air 14 Force to provide engineering assistance to 15 contractors on non-Big Safari programs? 16 MR. BARR: Objection, vague and 17 ambiguous, overly broad. 18 A. I do not know. 19 BY MR. WINE: 20 Q. Look at 5(D), "Provide command 21 requirements for peculiar logistics support 22 according to operational plans and deployments."</p> <p style="text-align: right;">Page 650</p>
<p>1 formulation of your opinions in this matter, sir? 2 MR. BARR: Objection, relevance. 3 A. I didn't specifically review them in 4 connection with my work on this case; but I believe 5 that during my tenure as an Air Force executive, I 6 had reviewed those documents. 7 BY MR. WINE: 8 Q. Now, you've offered opinions regarding 9 roles and responsibilities of the government and of 10 Ryan for providing security at the site, correct? 11 A. That's correct. 12 Q. Okay. And -- and did you consider this 13 material in the formulation of those opinions, sir? 14 A. I considered -- 15 MR. BARR: Objection, vague and 16 ambiguous. 17 A. I considered this regulation or this 18 document in its entirety, but I didn't specifically 19 go back and review those two Air Force regulations. 20 BY MR. WINE: 21 Q. If you'll turn to the next page, sir, 22 5369, in the right-hand column, 5, "Air Force</p> <p style="text-align: right;">Page 649</p>	<p>1 Is it customary for the government to 2 include a clause or support as described in 5(d) at 3 government contractors not performing Big Safari 4 operations in your experience, sir? 5 MR. BARR: Same objections. 6 A. 5(D)? 7 BY MR. WINE: 8 Q. I'm sorry. 7(D). 7(D), "Provide command 9 requirements." 10 A. (Reviewing document) I see it. 11 Q. And was this type of support customarily 12 provided to government contractors not involved in 13 Big Safari program in your experience, sir? 14 MR. BARR: Same objections. 15 A. Based upon my experience, I do recall some 16 programs where that kind of support was provided. 17 BY MR. WINE: 18 Q. Okay. And what -- what type of peculiar 19 logistics support was required at the Ryan site, 20 sir? 21 MR. BARR: Objection, assumes facts 22 not in evidence, vague and ambiguous.</p> <p style="text-align: right;">Page 651</p>

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<p>1 A. I don't recall seeing anything that</p> <p>2 provided details relative to logistic support.</p> <p>3 BY MR. WINE:</p> <p>4 Q. And if it was peculiar logistics support</p> <p>5 required under Big Safari, would that material have</p> <p>6 been classified, sir?</p> <p>7 MR. BARR: Objection, calls for</p> <p>8 speculation, vague and ambiguous, assumes --</p> <p>9 A. It may or may not.</p> <p>10 MR. BARR: -- facts not in evidence.</p> <p>11 BY MR. WINE:</p> <p>12 Q. Excuse me. Your answer?</p> <p>13 A. May or may not.</p> <p>14 Q. Did you consider either of these clauses</p> <p>15 or any of the clauses reviewed so far in the exhibit</p> <p>16 in formulating your opinions regarding government</p> <p>17 involvement at the Ryan site?</p> <p>18 MR. BARR: Objection, asked and</p> <p>19 answered.</p> <p>20 A. I considered this regulation in its</p> <p>21 entirety, yes.</p> <p>22</p> <p style="text-align: right;">Page 652</p>	<p>1 contractor in accordance with applicable security</p> <p>2 guides, except those functions which by agreement</p> <p>3 will be performed by the DCASR personnel."</p> <p>4 Do you see that, sir?</p> <p>5 A. Yes, I do.</p> <p>6 Q. And did you include that clause in your</p> <p>7 consideration in offering your opinions regarding</p> <p>8 responsibilities for providing physical security at</p> <p>9 the Ryan site in your expert report?</p> <p>10 A. I considered this regulation in its</p> <p>11 entirety, yes.</p> <p>12 Q. And I'll represent to you again, sir, with</p> <p>13 respect to the -- as I did with the prior, that I</p> <p>14 reviewed both of your expert reports last night; and</p> <p>15 this clause was not cited in the portion of your</p> <p>16 opinions relating to the provisioning of physical</p> <p>17 security.</p> <p>18 Why did you not include this?</p> <p>19 MR. BARR: Objection, misstates the</p> <p>20 reports as well as the witness' prior testimony.</p> <p>21 A. I do not know.</p> <p>22</p> <p style="text-align: right;">Page 654</p>
<p>1 BY MR. WINE:</p> <p>2 Q. Okay. Turn to Page 5371. In the</p> <p>3 right-hand corner -- in the right-hand column --</p> <p>4 excuse me -- under 4(a)(3), it says, "Special</p> <p>5 Projects AFLC" Liaison Offices -- or "AFLC LO will,</p> <p>6 (a), provide direct management and supervision of</p> <p>7 Big Safari programs at the contractors' facilities."</p> <p>8 Do you see that, sir?</p> <p>9 A. (Reviewing document) Yes, I do.</p> <p>10 Q. Did you include that clause in the</p> <p>11 formulation of your opinions regarding the</p> <p>12 government's involvement at the Ryan site?</p> <p>13 A. To repeat, I considered this regulation in</p> <p>14 my formulation of my opinions.</p> <p>15 Q. Now, I reviewed your expert reports last</p> <p>16 night. This clause was not cited in your expert</p> <p>17 reports.</p> <p>18 Can you explain why it was not?</p> <p>19 A. No, I cannot.</p> <p>20 Q. Okay. If you'll review further down the</p> <p>21 column in (e), it says that "The AFLC LO will</p> <p>22 supervise the day-to-day security operations of the</p> <p style="text-align: right;">Page 653</p>	<p>1 BY MR. WINE:</p> <p>2 Q. If you'd turn to Page 373. If you look at</p> <p>3 Clause 14 in the bottom right-hand corner, it says,</p> <p>4 "Program funds (through MCVX) for replacing items</p> <p>5 supplied from operating stocks and for one year's</p> <p>6 spares when necessary."</p> <p>7 Do you recall this clause, sir?</p> <p>8 A. I don't recall that specific clause; but I</p> <p>9 did review this document, yes.</p> <p>10 Q. You did. Okay. And do you know what</p> <p>11 replacing items supplied from operating stocks --</p> <p>12 what, specifically, operating stocks referred to</p> <p>13 there in this clause, sir?</p> <p>14 A. The Air Force Logistics Command maintained</p> <p>15 spares in stock at the applicable air material area</p> <p>16 or logistics center, as it was known in those days;</p> <p>17 and to the extent that those spares were available,</p> <p>18 they would be requisitioned from Air Force logistics</p> <p>19 command and provided to the -- the program. And to</p> <p>20 the extent that they were not available, MCMX --</p> <p>21 MCVX would provide funds to procure those spares.</p> <p>22 Q. Does -- does this clause relate to spares,</p> <p style="text-align: right;">Page 655</p>

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<p>1 sir, or supplies?</p> <p>2 MR. BARR: Objection, the document</p> <p>3 speaks for itself.</p> <p>4 A. It says spares.</p> <p>5 BY MR. WINE:</p> <p>6 Q. Where are you seeing "spares," sir?</p> <p>7 A. The last part of that. And one year</p> <p>8 spares when necessary.</p> <p>9 Q. Okay. And you'll see -- if you look at</p> <p>10 the left-hand side, sir, under 6(a), "Assure the</p> <p>11 procedure for support of the Big Safari programs are</p> <p>12 accomplished as follows," and 14 -- I apologize.</p> <p>13 Strike that, sir.</p> <p>14 Just to make sure we have a complete</p> <p>15 record on 14, if you'll turn the page to 372, 4(b)</p> <p>16 says, "AMAs and the Aerospace Guidance and Metrology</p> <p>17 Center will assign a specific Big Safari program</p> <p>18 manager to:" and then that is the precursor to -- to</p> <p>19 14.</p> <p>20 Am I reading that document correctly,</p> <p>21 sir?</p> <p>22 A. I have not found it yet.</p> <p style="text-align: right;">Page 656</p>	<p>1 A. 4 -- 14 is under 4(c) maintenance.</p> <p>2 Q. I -- I see where you're reading, sir.</p> <p>3 So -- well, the way this is written is that 4(b) and</p> <p>4 then there's an (a) supply, a (b) transportation,</p> <p>5 and a (c) maintenance as the lead-in for those</p> <p>6 items.</p> <p>7 A. That's what it says, yes.</p> <p>8 Q. Okay. So, 4(b)(c), maintenance.</p> <p>9 Am I -- am I reading it correctly?</p> <p>10 A. That's the way I would read it.</p> <p>11 Q. Okay. And what sorts of spares are</p> <p>12 maintained, sir, in operating stocks?</p> <p>13 A. It is spares to provide support to the</p> <p>14 item that is in operational status.</p> <p>15 Q. Would that include feedstocks?</p> <p>16 MR. BARR: Objection.</p> <p>17 A. No.</p> <p>18 BY MR. WINE:</p> <p>19 Q. What would it include?</p> <p>20 A. Spare components of the end item would</p> <p>21 include those things that are stocks stored and</p> <p>22 issued to operational commands to provide support to</p> <p style="text-align: right;">Page 658</p>
<p>1 Q. If you look on Page 5372 in the right-hand</p> <p>2 column --</p> <p>3 A. 72?</p> <p>4 Q. Yes, sir.</p> <p>5 A. I'm sorry. I was on the wrong page.</p> <p>6 Q. Right-hand column, 4(b).</p> <p>7 A. Okay.</p> <p>8 Q. And it says, "AMAs and the Aerospace</p> <p>9 Guidance and Metrology Center will assign a specific</p> <p>10 Big Safari manager to..."</p> <p>11 A. Okay.</p> <p>12 Q. And then that is what qualifies</p> <p>13 Paragraph 14 that we were -- that you testified to.</p> <p>14 Am I reading that correctly, sir?</p> <p>15 MR. BARR: Objection, the record's</p> <p>16 confusing -- the question's confusing, vague and</p> <p>17 ambiguous.</p> <p>18 BY MR. WINE:</p> <p>19 Q. Is that the precursor to 14, sir?</p> <p>20 A. (Reviewing document) Not necessarily.</p> <p>21 Q. Okay. What do you view as the precursor</p> <p>22 to 14?</p> <p style="text-align: right;">Page 657</p>	<p>1 that unit and were applicable and called for in the</p> <p>2 contract. They would be provided to the contractor</p> <p>3 as government-furnished property.</p> <p>4 Q. If you'd turn the page, sir, I have one</p> <p>5 last clause. I'd like to ask you about this</p> <p>6 document. If you look at Paragraph 16 in the</p> <p>7 left-hand column --</p> <p>8 MR. BARR: What page?</p> <p>9 MR. WINE: 5374.</p> <p>10 BY MR. WINE:</p> <p>11 Q. Are you with me? It says, "Assure that</p> <p>12 security of the Big Safari program is maintained at</p> <p>13 the AMA level. Accomplish program security</p> <p>14 requirements, assignment of level clearances, and</p> <p>15 processing of classified information using the</p> <p>16 guidance specified in the Big Safari Security</p> <p>17 Guide."</p> <p>18 Do you see that language, sir?</p> <p>19 A. Yes, I do.</p> <p>20 Q. Did you include that language in the</p> <p>21 formulation of your opinions regarding government</p> <p>22 involvement at the site and, in particular, the</p> <p style="text-align: right;">Page 659</p>

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<p>1 provisioning of security as it --</p> <p>2 MR. BARR: Objection --</p> <p>3 BY MR. WINE:</p> <p>4 Q. -- relates to the Ryan site?</p> <p>5 MR. BARR: Objection, asked and</p> <p>6 answered, compound, vague and ambiguous.</p> <p>7 A. That is not what this paragraph says. It</p> <p>8 has nothing to do with the site. It is -- assure</p> <p>9 that security of the Big Safari program is</p> <p>10 maintained at the AMA level.</p> <p>11 BY MR. WINE:</p> <p>12 Q. Okay.</p> <p>13 A. Air material area. And it is not at Ryan.</p> <p>14 Q. And you're certain there was not an AMA</p> <p>15 area at the Ryan site?</p> <p>16 A. We covered that --</p> <p>17 MR. BARR: Objection.</p> <p>18 A. -- that item discussion significantly at</p> <p>19 the 2009 deposition. And based upon my personal</p> <p>20 knowledge of working at an air material area for</p> <p>21 most of my adult life, they had some of the</p> <p>22 functions of a logistics operation at Ryan; but it</p> <p style="text-align: right;">Page 660</p>	<p>1 MR. BARR: Assumes facts not in</p> <p>2 evidence.</p> <p>3 A. To repeat, in my opinion, Paragraph 16 has</p> <p>4 nothing to do with the Ryan site.</p> <p>5 BY MR. WINE:</p> <p>6 Q. Do you have sufficient facts to know what</p> <p>7 was being performed -- what work was being performed</p> <p>8 at the Ryan site for Big Safari to testify about</p> <p>9 what security the government did provide?</p> <p>10 MR. BARR: Objection, vague and</p> <p>11 ambiguous.</p> <p>12 A. Other than --</p> <p>13 MR. BARR: Assumes facts not in</p> <p>14 evidence.</p> <p>15 A. Other than what is included in the</p> <p>16 deposition by Bobbi Swann and in this regulation and</p> <p>17 the other documents that I referred to during my</p> <p>18 review of this case, no.</p> <p>19 BY MR. WINE:</p> <p>20 Q. Can you describe for -- for the Court the</p> <p>21 nature of -- of control, if any, the government</p> <p>22 utilized over that area of the site that was</p> <p style="text-align: right;">Page 662</p>
<p>1 was not an AMA.</p> <p>2 BY MR. WINE:</p> <p>3 Q. And do you know whether the functions that</p> <p>4 Ryan was performing required the government to</p> <p>5 include the types of security requirements described</p> <p>6 in Paragraph 16 that you just read -- or that I just</p> <p>7 read to you?</p> <p>8 MR. BARR: Objection, assumes facts</p> <p>9 not in evidence.</p> <p>10 A. At the air material area?</p> <p>11 BY MR. WINE:</p> <p>12 Q. No. At Ryan.</p> <p>13 MR. BARR: Same objection.</p> <p>14 A. This paragraph has nothing to do with</p> <p>15 Ryan.</p> <p>16 BY MR. WINE:</p> <p>17 Q. But I didn't ask you that, sir.</p> <p>18 I said: Do you know whether the</p> <p>19 logistics support requirements that Ryan was</p> <p>20 providing through Big Safari on the site required</p> <p>21 the employ -- the use of the program security</p> <p>22 requirements described in this paragraph?</p> <p style="text-align: right;">Page 661</p>	<p>1 designated for Big Safari during its operational</p> <p>2 period at the Ryan site?</p> <p>3 MR. BARR: Objection, assumes facts</p> <p>4 not in evidence, vague and ambiguous.</p> <p>5 A. Based upon my recollection, they had the</p> <p>6 responsibility of review and approval of the</p> <p>7 individuals who had access to that area.</p> <p>8 Based upon the documents that I</p> <p>9 reviewed, Ryan had responsibility for physical</p> <p>10 control of the area. There were no, if you will,</p> <p>11 armed military guards in the area that I saw any</p> <p>12 evidence of; and as far as I know, the military had</p> <p>13 the responsibility of reviewing Ryan's procedures</p> <p>14 and processes for safeguarding classified</p> <p>15 information. But the responsibility was that of the</p> <p>16 contractor.</p> <p>17 BY MR. WINE:</p> <p>18 Q. Where would you have expected to see</p> <p>19 documentation of armed security guards -- armed</p> <p>20 guards securing that portion of the site used for</p> <p>21 Big Safari that you testified you have not seen?</p> <p>22 MR. BARR: Objection, calls for</p> <p style="text-align: right;">Page 663</p>

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<p>1 speculation, vague and ambiguous.</p> <p>2 A. The only thing that I saw relative to a</p> <p>3 guard was in Bobbi Swann's deposition where she said</p> <p>4 that when she moved the Big Safari program office</p> <p>5 to -- from Frontier Street -- I think they called it</p> <p>6 the warehouse -- to Kearny Mesa if I pronounced it</p> <p>7 correctly, he took a secretary and a guard.</p> <p>8 BY MR. WINE:</p> <p>9 Q. Now, sir, if the government has a security</p> <p>10 protocol for a site, has specific guards in an area,</p> <p>11 things like that, the government typically tends to</p> <p>12 keep that information as classified so as to not</p> <p>13 provide that type of information to the general</p> <p>14 public or to individuals that might wish to</p> <p>15 improperly or illegally access a site, correct?</p> <p>16 MR. BARR: Objection, calls for</p> <p>17 speculation, vague and ambiguous.</p> <p>18 BY MR. WINE:</p> <p>19 Q. In your experience --</p> <p>20 MR. BARR: Excuse me. I'm not</p> <p>21 finished with my objection.</p> <p>22 MR. WINE: I thought you were.</p> <p style="text-align: right;">Page 664</p>	<p>1 question I asked you.</p> <p>2 Does the government, when it</p> <p>3 documents its security protocols for a site, make</p> <p>4 that available to the general public; or does it</p> <p>5 classify those materials?</p> <p>6 A. I do not recall ever seeing a protocol for</p> <p>7 security at Kelly Air Force Base that was</p> <p>8 classified.</p> <p>9 Q. So, they were all unclassified?</p> <p>10 A. I never recall seeing a written protocol</p> <p>11 for security.</p> <p>12 Q. Okay. Let's go back to some of the</p> <p>13 testimony you gave to me on Wednesday.</p> <p>14 A. Are we through with 234?</p> <p>15 Q. You're through with 234.</p> <p>16 Now, I asked you some questions about</p> <p>17 the documents you did not cite in your expert</p> <p>18 report, but you referenced as having considered in</p> <p>19 formulating your expert opinions when Mr. Barr</p> <p>20 questioned you on direction. There were roughly 167</p> <p>21 of those documents that were not referenced in your</p> <p>22 expert reports but which the government marked as an</p> <p style="text-align: right;">Page 666</p>
<p>1 MR. BARR: Calls for speculation.</p> <p>2 It's vague and ambiguous. It's argumentative and a</p> <p>3 question of relevance.</p> <p>4 BY MR. WINE:</p> <p>5 Q. Okay. You spent 30 years in federal</p> <p>6 employment, sir. You're familiar with -- you worked</p> <p>7 at Kelly Air Force Base, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. There were armed guards at Kelly Air Force</p> <p>10 Base?</p> <p>11 A. That is correct.</p> <p>12 Q. In your 30 years' experience in federal</p> <p>13 service, does the government publish or make</p> <p>14 available to the general public its security</p> <p>15 protocols for a site?</p> <p>16 MR. BARR: Objection, vague and</p> <p>17 ambiguous.</p> <p>18 A. Anybody who drove onto or by Kelly Air</p> <p>19 Force Base was fully aware of the armed guards that</p> <p>20 we maintained at the gates.</p> <p>21 BY MR. WINE:</p> <p>22 Q. Okay. That's -- but that's not the</p> <p style="text-align: right;">Page 665</p>	<p>1 exhibit in this matter.</p> <p>2 Do you recall that, sir?</p> <p>3 MR. BARR: Object to misstating the</p> <p>4 record.</p> <p>5 A. I am aware that there were more documents</p> <p>6 as exhibits to my deposition than were cited in my</p> <p>7 report, yes.</p> <p>8 BY MR. WINE:</p> <p>9 Q. Why -- what happened in the intervening</p> <p>10 two years that required you to reference those</p> <p>11 documents that weren't referenced in your report?</p> <p>12 Why didn't you reference them in your report to</p> <p>13 begin with?</p> <p>14 A. Many of the documents were made available</p> <p>15 to me subsequent to the preparation of my expert</p> <p>16 report.</p> <p>17 Q. So, those 167 documents were not provided</p> <p>18 to you in your -- in the author -- prior to the</p> <p>19 authorship or in support of the authorship of your</p> <p>20 report, sir?</p> <p>21 MR. BARR: Objection, misstates the</p> <p>22 witness' testimony.</p> <p style="text-align: right;">Page 667</p>

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<p>1 A. As I sit here today, I cannot specifically</p> <p>2 tell you which ones of those documents were provided</p> <p>3 to me at what point in time.</p> <p>4 BY MR. WINE:</p> <p>5 Q. Okay.</p> <p>6 A. But many documents were provided to me</p> <p>7 subsequent to the preparation of my expert report.</p> <p>8 Q. Now, I believe you also testified that you</p> <p>9 ran queries in the DOJ database over the course of</p> <p>10 the last two, two and a half months; is that</p> <p>11 correct?</p> <p>12 A. Yes, I did.</p> <p>13 Q. And what queries did you run in the DOJ</p> <p>14 database, sir?</p> <p>15 MR. BARR: Objection, asked and</p> <p>16 answered.</p> <p>17 A. As I sit here today, I cannot tell you</p> <p>18 specifically what I recall.</p> <p>19 BY MR. WINE:</p> <p>20 Q. What subject matter were you querying the</p> <p>21 J -- DOJ database on?</p> <p>22 A. As I sit here today, I cannot remember</p> <p style="text-align: right;">Page 668</p>	<p>1 BY MR. WINE:</p> <p>2 Q. You understand that?</p> <p>3 MR. BARR: Objection, argumentative.</p> <p>4 BY MR. WINE:</p> <p>5 Q. So, if there's no way for me to know what</p> <p>6 you have or haven't looked for, how am I able to</p> <p>7 verify what is or is not material you've seen in the</p> <p>8 formulation of your expert opinions?</p> <p>9 MR. BARR: Objection, argumentative,</p> <p>10 misstates the witness' testimony, relevance.</p> <p>11 A. I do not know.</p> <p>12 BY MR. WINE:</p> <p>13 Q. Okay. Now, we talked about consumable</p> <p>14 supplies on Wednesday; and there were -- I had</p> <p>15 questions for you as to whether or not materials</p> <p>16 used in batch processing had value. In particular,</p> <p>17 let's take first TCE.</p> <p>18 Is TCE that is used in a</p> <p>19 manufacturing facility an item of value to the</p> <p>20 contractor?</p> <p>21 MR. BARR: Objection, asked and</p> <p>22 answered.</p> <p style="text-align: right;">Page 670</p>
<p>1 exactly what subjects I was looking at.</p> <p>2 Q. What -- what was the purpose of you</p> <p>3 engaging in that effort, sir?</p> <p>4 A. To try to obtain additional documentation</p> <p>5 that reflected upon the issue that I was concerned</p> <p>6 with.</p> <p>7 Q. Did you make any notes regarding the</p> <p>8 searches you were performing, sir?</p> <p>9 A. I did not.</p> <p>10 Q. You didn't -- didn't retain any</p> <p>11 information about the searches you performed?</p> <p>12 A. I did not.</p> <p>13 Q. So, sitting here today, there's no way of</p> <p>14 finding out what information you looked for and</p> <p>15 found or didn't find in the last two months?</p> <p>16 A. Not that I know of.</p> <p>17 Q. Okay. You understand the reason I'd like</p> <p>18 to know that, sir, is because much of your testimony</p> <p>19 is related to information that you haven't seen in</p> <p>20 this matter.</p> <p>21 MR. BARR: Object --</p> <p>22</p> <p style="text-align: right;">Page 669</p>	<p>1 A. To the contractor?</p> <p>2 BY MR. WINE:</p> <p>3 Q. Yes.</p> <p>4 A. Since a contractor procures those kinds of</p> <p>5 items, I would assume that he considers it to be of</p> <p>6 value.</p> <p>7 Q. And will a contractor -- since it is an</p> <p>8 item of value to the contractor, is the contractor</p> <p>9 able to burden its cost-based contracts for the</p> <p>10 expenses associated with procuring an item such as</p> <p>11 TCE?</p> <p>12 A. It is able to burden its overhead with any</p> <p>13 cost that is considered to be allowable, allocable</p> <p>14 and reasonable.</p> <p>15 Q. And would TCE qualify in that regard, sir?</p> <p>16 MR. BARR: Objection, hypothetical.</p> <p>17 A. I don't recall seeing any documentation</p> <p>18 relative to what they included in their overhead</p> <p>19 that specifically included TCE; but based upon my</p> <p>20 knowledge -- personal knowledge of the processes</p> <p>21 that contractors use to burden their overhead, if</p> <p>22 you will, it would be considered to be a cost -- a</p> <p style="text-align: right;">Page 671</p>

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<p>1 type of cost that they would include in their</p> <p>2 overhead.</p> <p>3 BY MR. WINE:</p> <p>4 Q. And what about chromium? Same -- same</p> <p>5 scenario. If a -- a government contractor requires</p> <p>6 the use of chromium to, say, do anodizing or</p> <p>7 chrome-plating activities at a site for a cost-based</p> <p>8 contract, would those costs to purchase chromium be</p> <p>9 allowable and allocable under that contract?</p> <p>10 MR. BARR: Objection, compound.</p> <p>11 A. The contractor was able to include in its</p> <p>12 overhead submissions to the government any cost that</p> <p>13 would be considered to be allowable, allocable and</p> <p>14 reasonable.</p> <p>15 BY MR. WINE:</p> <p>16 Q. And in your experience for anodizing</p> <p>17 operations, would chromium be one of those items?</p> <p>18 A. In my experience, I do not specifically</p> <p>19 recall any instance where the overhead submissions</p> <p>20 that I reviewed contain chromium, quote, unquote.</p> <p>21 Q. Not the question I asked you, sir.</p> <p>22 A. That is the question that I understood you</p> <p style="text-align: right;">Page 672</p>	<p>1 unreasonable?</p> <p>2 A. Since I didn't review every DCAA audit</p> <p>3 that was conducted in the history of this facility,</p> <p>4 I didn't see all the documents; but I do not recall</p> <p>5 any specific DCAA audit that I reviewed where they</p> <p>6 considered those kinds of overhead costs to be</p> <p>7 unallowable.</p> <p>8 Q. Now, if a contractor stops performing on a</p> <p>9 cost-based contract in the middle of performance,</p> <p>10 middle of -- of contract performance -- let's say it</p> <p>11 goes bankrupt or -- or for other reasons is unable</p> <p>12 to complete the performance, because the government</p> <p>13 has made partial payment under that cost contract,</p> <p>14 does the government own title to any of the material</p> <p>15 in process?</p> <p>16 MR. BARR: Objection, vague and</p> <p>17 ambiguous, calls for -- it's an improper</p> <p>18 hypothetical.</p> <p>19 A. It would depend upon the circumstances,</p> <p>20 but each individual case would have to be reviewed</p> <p>21 on its own merits.</p> <p>22</p> <p style="text-align: right;">Page 674</p>
<p>1 to ask.</p> <p>2 Q. Okay. Not whether you saw requests for</p> <p>3 chromium -- for accounting treatment for chromium;</p> <p>4 but would chromium, by your experience, be an item,</p> <p>5 if used in a process at a manufacturing plant for a</p> <p>6 government contract, be an item that could be</p> <p>7 allocable, allowable and reasonable under a contract</p> <p>8 that was being used to support that contract?</p> <p>9 A. If the DCAA considered those costs to be</p> <p>10 allowable, allocable and reasonable, yes.</p> <p>11 Q. Okay. And what about lubricants?</p> <p>12 A. Same answer. If DCAA considered those</p> <p>13 costs to be allowable, allocable and reasonable, the</p> <p>14 contractor would be able to include those costs in</p> <p>15 its overhead and recover those costs through either</p> <p>16 government or commercial contracts.</p> <p>17 Q. What about cutting oils?</p> <p>18 A. Same answer.</p> <p>19 Q. Other than the documentation that you've</p> <p>20 testified about regarding Convair, are you aware of</p> <p>21 any DCAA findings that costs submitted by Ryan were</p> <p>22 deemed to be unallowable, unallocable or</p> <p style="text-align: right;">Page 673</p>	<p>1 BY MR. WINE:</p> <p>2 Q. And can you give an answer at all based on</p> <p>3 the question that I asked you, sir?</p> <p>4 MR. BARR: Same objections;</p> <p>5 argumentative.</p> <p>6 A. A determination would have to be made</p> <p>7 based upon the circumstances of each individual</p> <p>8 case, and I don't know if you can give a generic</p> <p>9 answer to that question.</p> <p>10 BY MR. WINE:</p> <p>11 Q. If -- if a contract calls for anodizing of</p> <p>12 parts and chromium is used in that anodizing</p> <p>13 process, is the -- is chromium part of the end</p> <p>14 product?</p> <p>15 A. I am not that familiar with the anodizing</p> <p>16 process. I have looked at the specifications</p> <p>17 relative to anodizing. I don't recall a situation</p> <p>18 where chrome is deposited directly on the -- the end</p> <p>19 product being produced.</p> <p>20 Based upon what I have seen and</p> <p>21 contrary to operations, chrome is deposited during</p> <p>22 chrome-plating operations, but not necessarily in</p> <p style="text-align: right;">Page 675</p>

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<p>1 anodizing processes.</p> <p>2 Q. So, let's take your clarification then.</p> <p>3 In chrome-plating operations -- you're aware that</p> <p>4 chrome-plating operations were performed at this</p> <p>5 site, correct?</p> <p>6 MR. BARR: Objection, assumes facts</p> <p>7 not in evidence.</p> <p>8 A. I do not recall seeing anything</p> <p>9 specifically speaking to chrome plating.</p> <p>10 BY MR. WINE:</p> <p>11 Q. So, you have no information about that one</p> <p>12 way or the other?</p> <p>13 A. I have no information.</p> <p>14 Q. Okay. Let's assume a chrome-plating</p> <p>15 operation at the site.</p> <p>16 Would chromium then be part of the</p> <p>17 end product?</p> <p>18 MR. BARR: Objection, calls for</p> <p>19 speculation.</p> <p>20 A. If --</p> <p>21 MR. BARR: Incomplete hypothetical.</p> <p>22 A. If chrome plating was performed, then the</p> <p style="text-align: right;">Page 676</p>	<p>1 for anodizing operations where chromium continues or</p> <p>2 chromic acids continue to have use -- useful future</p> <p>3 life as it sits in a -- a -- a processing batch?</p> <p>4 MR. BARR: Same objections; assumes</p> <p>5 facts not in evidence.</p> <p>6 A. Possibly in theory, but not in practice.</p> <p>7 BY MR. WINE:</p> <p>8 Q. What about cutting oils or lubricants that</p> <p>9 reside in a machine before it's being used? Do</p> <p>10 those have value?</p> <p>11 MR. BARR: Objection, vague and</p> <p>12 ambiguous, hypothetical, calls for speculation.</p> <p>13 A. In my judgment, no.</p> <p>14 BY MR. WINE:</p> <p>15 Q. Why not?</p> <p>16 A. I don't know how you would go about</p> <p>17 removing those kinds of items from a piece of</p> <p>18 contractor-owned equipment and then using those in</p> <p>19 some other operation.</p> <p>20 Q. Do you have sufficient background to know</p> <p>21 how manufacturers do that as part of routine</p> <p>22 maintenance of equipment?</p> <p style="text-align: right;">Page 678</p>
<p>1 chrome that would be deposited -- pardon me -- on</p> <p>2 the end product would be incorporated into and made</p> <p>3 a part of the product being delivered to the</p> <p>4 government.</p> <p>5 BY MR. WINE:</p> <p>6 Q. Okay. Based on your answer, sir, would</p> <p>7 that make the chromium solution used for</p> <p>8 chrome-plating operations an item of value to the</p> <p>9 government?</p> <p>10 MR. BARR: Objection, hypothetical,</p> <p>11 calls for speculation, vague and ambiguous.</p> <p>12 A. Not necessarily. If it were a used</p> <p>13 solution, then I don't see where it would have</p> <p>14 value.</p> <p>15 BY MR. WINE:</p> <p>16 Q. If it was a solution that continued to</p> <p>17 have productive life, would it be an item of value</p> <p>18 to the government?</p> <p>19 MR. BARR: Same objections.</p> <p>20 A. May or may not.</p> <p>21 BY MR. WINE:</p> <p>22 Q. Is that -- is your answer any different</p> <p style="text-align: right;">Page 677</p>	<p>1 A. Specifically, no.</p> <p>2 Q. And what about for -- does your answer</p> <p>3 change if it's government-furnished equipment?</p> <p>4 MR. BARR: Same objections.</p> <p>5 A. If it were government-furnished equipment</p> <p>6 and the government reacquired that particular piece</p> <p>7 of equipment and moved it to another location and if</p> <p>8 it contained at that time those kinds of fluids,</p> <p>9 then it could possibly have value.</p> <p>10 BY MR. WINE:</p> <p>11 Q. Now, sir, I asked you a question the other</p> <p>12 day about testimony from -- or expected testimony</p> <p>13 from a Ryan witness, Arden Honrud; and in answering</p> <p>14 my question, you said, "I don't know if I'll be</p> <p>15 given an opportunity to express my opinion</p> <p>16 subsequent to sworn testimony in court. If I do</p> <p>17 have that kind of opinion, I will have to listen to</p> <p>18 the testimony and then give you an appropriate</p> <p>19 opinion at the time."</p> <p>20 Sir, if the condition of your health</p> <p>21 continues unchanged as it is today, would you be</p> <p>22 able to testify at trial next year in San Diego in</p> <p style="text-align: right;">Page 679</p>

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<p>1 this matter.</p> <p>2 MR. BARR: Objection, hypothetical,</p> <p>3 calls for speculation.</p> <p>4 A. I refer you back to the declaration that I</p> <p>5 filed several months ago. Unfortunately, I am not</p> <p>6 prophetic. I cannot tell you what my health</p> <p>7 condition will be a year from now. I don't think</p> <p>8 that I will be able to testify at trial; but that</p> <p>9 will depend upon my health a year from now or two</p> <p>10 years, whenever the trial is -- is held.</p> <p>11 BY MR. WINE:</p> <p>12 Q. Okay. One moment.</p> <p>13 MR. WINE: Nothing else for you at</p> <p>14 this time, Mr. Jordan. Thank you.</p> <p>15 THE WITNESS: Okay.</p> <p>16 MR. BARR: Okay. We'll take a --</p> <p>17 let's take a ten-minute break, and then we'll have</p> <p>18 some redirect.</p> <p>19 THE VIDEOGRAPHER: Going off record.</p> <p>20 Time now is 10:04.</p> <p>21 (Recess from 10:04 a.m. to 10:18</p> <p>22 a.m.)</p> <p style="text-align: right;">Page 680</p>	<p>1 And where it refers to management,</p> <p>2 management of what and where?</p> <p>3 MR. WINE: Objection, leading.</p> <p>4 A. My interpretation is referring to the</p> <p>5 management of those projects throughout the -- the</p> <p>6 Air Force.</p> <p>7 BY MR. BARR:</p> <p>8 Q. Is this essentially management of</p> <p>9 Air Force -- Air Force personnel and programs?</p> <p>10 MR. WINE: Objection, leading.</p> <p>11 A. That would be my interpretation, yes.</p> <p>12 BY MR. BARR:</p> <p>13 Q. Similar question with respect to the</p> <p>14 language that Mr. Wine read to you in Paragraph 2(C)</p> <p>15 on the first page, 234, where it said -- referred to</p> <p>16 "Projects designated for Big Safari management will</p> <p>17 be directed only by the Air Force or the Secretary</p> <p>18 of Defense," et cetera.</p> <p>19 Where it says, "Projects designated</p> <p>20 for Big Safari management," was that management</p> <p>21 within the Air Force or at contractors.</p> <p>22 MR. WINE: Objection, leading.</p> <p style="text-align: right;">Page 682</p>
<p>1 THE VIDEOGRAPHER: Going back on</p> <p>2 record. Time now is 10:18.</p> <p>3 FURTHER EXAMINATION</p> <p>4 BY MR. BARR:</p> <p>5 Q. All right, Mr. Jordan. Let's pick up</p> <p>6 where -- essentially where Mr. Wine left off,</p> <p>7 Government Exhibit 234.</p> <p>8 At the top, the title just before the</p> <p>9 words "Big Safari program" is a (U).</p> <p>10 What does that mean?</p> <p>11 A. It -- I think it means that this -- the</p> <p>12 title Big Safari program is unclassified.</p> <p>13 Q. Okay. And then underneath that, there's a</p> <p>14 similar parenthetical for that introductory</p> <p>15 paragraph.</p> <p>16 Do you see that?</p> <p>17 A. Yes, I do.</p> <p>18 Q. And it says, "This regulation outlines the</p> <p>19 policies and procedures governing the management of</p> <p>20 certain projects involving the initial modification,</p> <p>21 cyclic maintenance, and follow-on support of</p> <p>22 selected airborne recognizance systems."</p> <p style="text-align: right;">Page 681</p>	<p>1 A. That would be management by the Air Force</p> <p>2 and incorporation of a project under the umbrella of</p> <p>3 Big Safari.</p> <p>4 BY MR. BARR:</p> <p>5 Q. Now, this Air Force regulation, I take it</p> <p>6 that in the course of your career, you became</p> <p>7 familiar with a number of Air Force regulations?</p> <p>8 A. Yes, I did.</p> <p>9 Q. Were these for internal management</p> <p>10 purposes?</p> <p>11 MR. WINE: Objection, leading.</p> <p>12 A. They were for internal management purposes</p> <p>13 unless they were specifically included in a</p> <p>14 contract.</p> <p>15 BY MR. BARR:</p> <p>16 Q. Okay. Let's turn to the page with the</p> <p>17 Bates number ending in 5371.</p> <p>18 A. Okay.</p> <p>19 Q. And I believe your attention was directed</p> <p>20 to Paragraph 4(A)(3), which says, "Special Projects</p> <p>21 AFLC Liaison Offices (AFLC LO) will, A, provide</p> <p>22 direct management and supervision of Big Safari</p> <p style="text-align: right;">Page 683</p>

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<p>1 programs at the contractor's facilities."</p> <p>2 Based on your understanding as a</p> <p>3 government contracting officer, direct management</p> <p>4 and supervision of whom?</p> <p>5 MR. WINE: Objection, document speaks</p> <p>6 for itself.</p> <p>7 A. (Reviewing document) My interpretation</p> <p>8 would be management of the detachment located at the</p> <p>9 various contractor facilities.</p> <p>10 MR. WINE: Object to the answer</p> <p>11 insofar as the clause is clear and unambiguous, not</p> <p>12 requiring an interpretation.</p> <p>13 BY MR. BARR:</p> <p>14 Q. And farther down below referring to that</p> <p>15 Subparagraph 4(A)(3)(E), it refers to "Supervise the</p> <p>16 day-to-day security operations of the" secure -- "of</p> <p>17 the contractor in accordance with applicable</p> <p>18 security guides, except those functions which, by</p> <p>19 agreement, will be performed by DCASR personnel."</p> <p>20 Do you interpret this provision to be</p> <p>21 in any way inconsistent with the opinions you've</p> <p>22 expressed as to who was responsible for security at</p> <p style="text-align: right;">Page 684</p>	<p>1 MR. BARR: The whole thing? Is "C"</p> <p>2 all on 19?</p> <p>3 A. Okay.</p> <p>4 BY MR. BARR:</p> <p>5 Q. And also Exhibit 21, if you would,</p> <p>6 Pages 33676 to 78 and, in particular,</p> <p>7 Article 4(C)(3).</p> <p>8 A. Okay.</p> <p>9 Q. Now, as far as the exceptions that are</p> <p>10 stated in the provisions that I have just referred</p> <p>11 you to in Exhibits 19 and 21, what is your essential</p> <p>12 understanding of the scope of those exceptions?</p> <p>13 MR. WINE: Objection, document speaks</p> <p>14 for itself, calls for a legal conclusion.</p> <p>15 A. Well, the key provision in both of these</p> <p>16 citations is claims by the contractor against the</p> <p>17 government, which are based upon responsibilities of</p> <p>18 the -- of the contractor to third parties and which</p> <p>19 involve costs reimbursable under the contract, but</p> <p>20 which are not known to the contractor.</p> <p>21 BY MR. BARR:</p> <p>22 Q. Okay. Now let's go back to Exhibit 20.</p> <p style="text-align: right;">Page 686</p>
<p>1 contractor facilities?</p> <p>2 MR. WINE: Objection, the document</p> <p>3 speaks for itself as does any inconsistency to the</p> <p>4 client's opinion or the witness' opinion in prior</p> <p>5 testimony.</p> <p>6 A. I do not.</p> <p>7 BY MR. BARR:</p> <p>8 Q. Let's go back to the subject of releases.</p> <p>9 You were shown Exhibit 20, and you were asked some</p> <p>10 questions about that the other day.</p> <p>11 I'd like to show you Exhibit 20 as</p> <p>12 well as 19 and 21. And for the record, I'm going to</p> <p>13 direct your attention to certain pages on each of</p> <p>14 these; and I'll indicate those pages for the record.</p> <p>15 Just let us know when you've finished</p> <p>16 reviewing those.</p> <p>17 A. (Reviewing documents) Okay.</p> <p>18 Q. With respect to Exhibit 19, let me direct</p> <p>19 your attention to Pages 34018 and 34019,</p> <p>20 Article 4(C)(2).</p> <p>21 MR. WINE: Is there anything on 18</p> <p>22 that you -- C(2) is on 1-9.</p> <p style="text-align: right;">Page 685</p>	<p>1 Now, the other day, you were asked to</p> <p>2 focus on one portion of the last six lines, that</p> <p>3 one-paragraph release form under Contract No.</p> <p>4 a(s)-314. Let me read to you that provision.</p> <p>5 It says, "Provided that this</p> <p>6 agreement expressly excepts from this release</p> <p>7 without prejudice to the rights of either party</p> <p>8 under the above-mentioned contract, all claims not</p> <p>9 known to the contractor and hereafter presented or</p> <p>10 made against the contractor on any subcontract claim</p> <p>11 or claim of any third person of whatsoever kind or</p> <p>12 nature and for which the contractor is liable under</p> <p>13 the aforesaid contract."</p> <p>14 A. Okay.</p> <p>15 Q. Now, I'd like you to focus on the last</p> <p>16 line. Mr. Wine did not focus your attention on that</p> <p>17 last line.</p> <p>18 I'd like you to do that. And could</p> <p>19 you, based on your experience as a former</p> <p>20 contracting officer, explain what the focus of that</p> <p>21 last line is?</p> <p>22 MR. WINE: Objection, document speaks</p> <p style="text-align: right;">Page 687</p>

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<p>1 for itself, calls for a legal conclusion.</p> <p>2 A. It speaks to -- in my opinion based upon</p> <p>3 my experience and -- and training, it speaks to</p> <p>4 those costs that the contractor incurred</p> <p>5 specifically related to a specific contract and his</p> <p>6 responsibility to pay for those supplies or whatever</p> <p>7 that he incurred an obligation to under this</p> <p>8 contract.</p> <p>9 BY MR. BARR:</p> <p>10 Q. Did you discern a change in the format and</p> <p>11 contents of releases between the World War II period</p> <p>12 and the post-war period?</p> <p>13 MR. WINE: Objection, goes beyond the</p> <p>14 scope of the -- of the cross-examination.</p> <p>15 A. The Department of Defense was created in</p> <p>16 1947.</p> <p>17 (Whereupon, Mr. Tishok left the</p> <p>18 room.)</p> <p>19 A. The first edition of the Armed Services</p> <p>20 Procurement Regulation was published in 1948. And</p> <p>21 those releases that were executed subsequent to the</p> <p>22 publication of -- of ASPR did have a more focused</p> <p style="text-align: right;">Page 688</p>	<p>1 contracts under which a release was executed and</p> <p>2 eliminates the possibility of an open-ended</p> <p>3 liability on the part of the government.</p> <p>4 Q. On the part of whom? I'm sorry.</p> <p>5 A. Of the government.</p> <p>6 Q. I see. Now, the other day, Mr. Wine used</p> <p>7 the term "legacy environmental costs" a number of</p> <p>8 times.</p> <p>9 What was your understanding of</p> <p>10 Mr. Wine's use of that term?</p> <p>11 MR. WINE: Objection to the extent it</p> <p>12 mischaracterizes prior testimony and/or the record.</p> <p>13 A. My interpretation of legacy refers to</p> <p>14 those costs that were incurred prior to or inherited</p> <p>15 by a contractor from previous operations.</p> <p>16 BY MR. BARR:</p> <p>17 Q. Now, let me direct your attention to -- I</p> <p>18 believe he showed you two of these, but I don't</p> <p>19 think he showed you all of them -- Exhibits 71, 72</p> <p>20 and 73.</p> <p>21 I'll ask you -- I've tabbed a couple</p> <p>22 of pages. I'll ask you to review those documents.</p> <p style="text-align: right;">Page 690</p>
<p>1 and somewhat broader application than those that</p> <p>2 were executed during World War II.</p> <p>3 BY MR. BARR:</p> <p>4 Q. Now, did you mean to suggest that -- in</p> <p>5 your testimony the other day that what was marked as</p> <p>6 Exhibit 20 was the same as the releases that were</p> <p>7 executed throughout the period of 1939 to 1999?</p> <p>8 MR. WINE: Objection, leading.</p> <p>9 A. That was not my intent.</p> <p>10 BY MR. BARR:</p> <p>11 Q. What -- based on your knowledge and</p> <p>12 training over the decades as a government</p> <p>13 contracting officer, have been the essential</p> <p>14 purposes of releases in government contracting?</p> <p>15 MR. WINE: Objection, calls for a</p> <p>16 legal conclusion and analysis. It goes beyond the</p> <p>17 scope of the witness' expert report and opinions</p> <p>18 articulated therein and is, therefore, inadmissible.</p> <p>19 BY MR. BARR:</p> <p>20 Q. I'm just asking for your understanding of</p> <p>21 the policies.</p> <p>22 A. It brings to closure and finality those</p> <p style="text-align: right;">Page 689</p>	<p>1 While you're doing that, I've tabbed</p> <p>2 on Exhibit 71 Page 2504; and on Exhibit 72, I've</p> <p>3 tabbed Page 616.</p> <p>4 A. (Reviewing documents) Okay.</p> <p>5 Q. Now, based on your familiarity with these</p> <p>6 documents, both during your time as an Air Force</p> <p>7 contracting official and your work on this case, do</p> <p>8 any of these DCAA guidance documents use the word</p> <p>9 "legacy"?</p> <p>10 MR. WINE: Objection to the extent it</p> <p>11 mischaracterizes the witness' prior testimony in</p> <p>12 which he stated he did not have direct knowledge or</p> <p>13 familiarity with the documents based on his work</p> <p>14 within the Air Force.</p> <p>15 A. Based upon my reading of the documents,</p> <p>16 you won't find specifically the word "legacy" in</p> <p>17 these documents, to my -- best of my knowledge.</p> <p>18 BY MR. BARR:</p> <p>19 Q. Now, referring you to the -- Exhibit 71</p> <p>20 and 72, do these DCAA guidance documents address, in</p> <p>21 substance, the question of environmental costs with</p> <p>22 respect to prior operations?</p> <p style="text-align: right;">Page 691</p>

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<p>1 MR. WINE: Objection, the documents</p> <p>2 speak for themselves. The witness is not -- lacks</p> <p>3 the requisite knowledge on which to opine regarding</p> <p>4 the meaning or content of the documents.</p> <p>5 A. In substance, yes, they do.</p> <p>6 BY MR. BARR:</p> <p>7 Q. Could you identify the paragraph or</p> <p>8 provisions on those tabbed pages for us --</p> <p>9 MR. WINE: Objection --</p> <p>10 BY MR. BARR:</p> <p>11 Q. -- which do that?</p> <p>12 MR. WINE: Objection as leading.</p> <p>13 Counsel has tabbed the pages for the witness.</p> <p>14 A. Under Exhibit 72, it would be</p> <p>15 Paragraph 7-1920.7(a).</p> <p>16 BY MR. BARR:</p> <p>17 Q. And on 71?</p> <p>18 A. It would be under 2504 -- Page 2504, and</p> <p>19 the title of that paragraph is "Costs from a</p> <p>20 Contractor's Previous Site."</p> <p>21 Q. Okay. Thank you.</p> <p>22 Now let's return to the subject of</p> <p style="text-align: right;">Page 692</p>	<p>1 it makes progress payments?</p> <p>2 MR. WINE: Objection, calls for a</p> <p>3 legal analysis.</p> <p>4 A. Through either title or a lien on</p> <p>5 property, I think I -- as I identified it earlier as</p> <p>6 items of value.</p> <p>7 BY MR. BARR:</p> <p>8 Q. Now, we -- I think we touched on but I</p> <p>9 don't think we finished with our conversation</p> <p>10 regarding the liquidation of progress payments.</p> <p>11 Can you explain for the Court what</p> <p>12 liquidation of progress payments means?</p> <p>13 MR. WINE: Objection, goes beyond the</p> <p>14 scope of cross-examination and is, therefore,</p> <p>15 inadmissible.</p> <p>16 A. Liquidation is a process through which the</p> <p>17 government recoups the monies advanced to the</p> <p>18 contractor. For lack of a better term, you could</p> <p>19 almost consider it a loan, even though it is not a</p> <p>20 loan.</p> <p>21 Through deducting from the payment</p> <p>22 for completed end products the progress payments</p> <p style="text-align: right;">Page 694</p>
<p>1 progress payments. For both direct and cross,</p> <p>2 you've mentioned that the government protects its</p> <p>3 interests when making progress payments.</p> <p>4 Do you recall that subject?</p> <p>5 A. Yes, I do.</p> <p>6 Q. What interests are those?</p> <p>7 A. It would be much like security on a</p> <p>8 commercial loan. It protects the monies -- the</p> <p>9 right of the -- the government to recoup monies</p> <p>10 advanced to a contractor through progress payments.</p> <p>11 Q. And as far as the interests go, what are</p> <p>12 the essential interests of the government when it</p> <p>13 enters into a contract pursuant to which progress</p> <p>14 payments are made?</p> <p>15 MR. WINE: Objection, calls for a</p> <p>16 legal analysis.</p> <p>17 A. The primary interest of the government is</p> <p>18 to obtain delivery of the product for which it</p> <p>19 contracted.</p> <p>20 BY MR. BARR:</p> <p>21 Q. And how does the government go about</p> <p>22 protecting the interests in getting the product when</p> <p style="text-align: right;">Page 693</p>	<p>1 that were advanced to the -- the contractor so that</p> <p>2 at the completion of the contract, the government</p> <p>3 has recouped all of its monies advanced to the</p> <p>4 contractor, the contractor has been able to produce</p> <p>5 the item with none or minimal expense to commercial</p> <p>6 loans; and then the government receives delivery of</p> <p>7 the product for which it contracted.</p> <p>8 BY MR. BARR:</p> <p>9 Q. All right. Let's talk again about</p> <p>10 consumable chemicals; and you were asked some</p> <p>11 questions, both the other day and today, about</p> <p>12 chromium. I want to be sure that we're -- we're</p> <p>13 clear as far as the chromic acid that may have been</p> <p>14 used in the chromic acid anodizing process.</p> <p>15 Based on your experience, what is</p> <p>16 your understanding as to whether or not the chromic</p> <p>17 acid is actually deposited on the metal that is</p> <p>18 anodized?</p> <p>19 MR. WINE: Objection, goes beyond the</p> <p>20 scope of the witness' area of expertise for which</p> <p>21 he's been qualified and is, therefore, inadmissible.</p> <p>22 A. Based upon the specifications that I</p> <p style="text-align: right;">Page 695</p>

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<p>1 reviewed in preparation for my deposition, I do not</p> <p>2 believe that the chromic acid was depose --</p> <p>3 deposited upon the product being produced for the</p> <p>4 government.</p> <p>5 BY MR. BARR:</p> <p>6 Q. And were any of the cutting oils used in</p> <p>7 machine tools at the Harbor Drive Plant, to the best</p> <p>8 of your knowledge in your work on this case,</p> <p>9 incorporated into or made a part of the end item</p> <p>10 deliverable products made by Ryan or TRA?</p> <p>11 MR. WINE: Objection, beyond the</p> <p>12 scope of the witness' knowledge and his expert</p> <p>13 report and is therefore inadmissible.</p> <p>14 A. Based upon my opinions and knowledge that</p> <p>15 I have obtained through the years, it would not be</p> <p>16 incorporated into and made a part of the product</p> <p>17 being produced for the government.</p> <p>18 BY MR. BARR:</p> <p>19 Q. And Mr. Wine asked you questions --</p> <p>20 similar questions relating to lubricants used with</p> <p>21 the machine tools.</p> <p>22 Would any of the lubricants used in</p> <p style="text-align: right;">Page 696</p>	<p>1 BY MR. BARR:</p> <p>2 Q. Thank you, Mr. Jordan.</p> <p>3 MR. BARR: That's all I have.</p> <p>4 MR. WINE: If you'd just give us two</p> <p>5 minutes to make sure we don't have any cleanup.</p> <p>6 THE WITNESS: Okay.</p> <p>7 THE VIDEOGRAPHER: Going off record.</p> <p>8 Time now is 10:43.</p> <p>9 (Recess from 10:43 a.m. to 10:49</p> <p>10 a.m.)</p> <p>11 THE VIDEOGRAPHER: Going back on</p> <p>12 record. Time now is 10:49.</p> <p>13 FURTHER EXAMINATION</p> <p>14 BY MR. WINE:</p> <p>15 Q. Mr. Jordan, just a couple of cleanup</p> <p>16 questions. Did you work with any of the Big Safari</p> <p>17 regulations during your federal employment?</p> <p>18 A. I did not.</p> <p>19 Q. So, your testimony regarding the Big</p> <p>20 Safari regulations is based solely on your review of</p> <p>21 those documents in the context of this litigation?</p> <p>22 A. That is correct.</p> <p style="text-align: right;">Page 698</p>
<p>1 the machine tools at the Harbor Drive Plant have</p> <p>2 been incorporated into or made a part of the end</p> <p>3 item deliverable products made by the company for</p> <p>4 the government?</p> <p>5 A. Based upon --</p> <p>6 MR. WINE: Objection. Objection,</p> <p>7 goes beyond the scope of the witness' area of</p> <p>8 expertise and his expert opinions and is, therefore,</p> <p>9 inadmissible.</p> <p>10 A. Based upon my judgment, no.</p> <p>11 BY MR. BARR:</p> <p>12 Q. And as far as -- the same question with</p> <p>13 respect to the chlorinated solvents.</p> <p>14 Were -- based on your knowledge of</p> <p>15 what Ryan and TRA made for the military or prime</p> <p>16 contractors, were any of the chlorinated solvents</p> <p>17 used in degreasing equipment incorporated into or</p> <p>18 made a part of the end item deliverable products</p> <p>19 made by the company?</p> <p>20 MR. WINE: Same objections.</p> <p>21 A. Based upon my judgment, no.</p> <p>22</p> <p style="text-align: right;">Page 697</p>	<p>1 Q. Okay. Now, with respect to Jordan</p> <p>2 Exhibits 19, 20 and 21 that both Mr. Barr and I</p> <p>3 asked you questions about, do those release -- those</p> <p>4 releases relate exclusively to releases of contract</p> <p>5 claims, don't they?</p> <p>6 A. That is my interpretation of those</p> <p>7 clauses, yes.</p> <p>8 Q. Now, with respect to the work that was</p> <p>9 performed at the Ryan site, could Ryan perform the</p> <p>10 work that it was being contracted to do by the</p> <p>11 government without the use of TCE during the 1940s?</p> <p>12 MR. BARR: Objection, beyond the</p> <p>13 scope of the witness' expertise, reports and</p> <p>14 testimony.</p> <p>15 A. I don't know.</p> <p>16 BY MR. WINE:</p> <p>17 Q. How about the 1950s?</p> <p>18 MR. BARR: Same objections.</p> <p>19 A. Specifically, I do not know.</p> <p>20 BY MR. WINE:</p> <p>21 Q. Do you have any knowledge as to whether or</p> <p>22 not Ryan could have performed the work that the</p> <p style="text-align: right;">Page 699</p>

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<p>1 government contracted with it to perform without</p> <p>2 using TCE at any point in time during its</p> <p>3 operations?</p> <p>4 MR. BARR: Same objections.</p> <p>5 A. Based upon my experience, in the contracts</p> <p>6 that I am personally familiar with, most of the</p> <p>7 programs where contractors used large volumes of TCE</p> <p>8 were prepare and overhaul of engines, specifically</p> <p>9 reciprocating engines.</p> <p>10 BY MR. WINE:</p> <p>11 Q. Okay. And with respect to manufacturing</p> <p>12 operations where metals and specialty steels and</p> <p>13 other materials were being milled, used on lathes,</p> <p>14 used in high pressure hydraulic presses and things</p> <p>15 like that, do you know if that work could be</p> <p>16 performed without the use of TCE at a site?</p> <p>17 MR. BARR: Same objections.</p> <p>18 A. I don't know.</p> <p>19 BY MR. WINE:</p> <p>20 Q. Do you know what TCE is used for at a site</p> <p>21 like that?</p> <p>22 MR. BARR: Same objections.</p> <p style="text-align: right;">Page 700</p>	<p>1 A. I don't know specifically whether the</p> <p>2 dipping operations that I personally involved -- saw</p> <p>3 were TCE or PCE.</p> <p>4 BY MR. WINE:</p> <p>5 Q. Do you know of any reason why a vapor</p> <p>6 degreaser cannot be used for cleaning of tooling?</p> <p>7 MR. BARR: Same objections; calls for</p> <p>8 speculation.</p> <p>9 A. I guess, in theory, it could be.</p> <p>10 BY MR. WINE:</p> <p>11 Q. Do you know if any of the work performed</p> <p>12 at the Ryan site for which the government contracted</p> <p>13 could have been performed without the use of</p> <p>14 chromium?</p> <p>15 MR. BARR: Same objections.</p> <p>16 A. I think I testified earlier that I don't</p> <p>17 recall specifically any items that were, quote,</p> <p>18 unquote, chrome plated.</p> <p>19 BY MR. WINE:</p> <p>20 Q. Did you run searches in the DOJ database</p> <p>21 to see if there were chrome-plating operations at</p> <p>22 the site?</p> <p style="text-align: right;">Page 702</p>
<p>1 A. It is used to remove oils, greases and</p> <p>2 carbon products from the -- the item being</p> <p>3 degreased.</p> <p>4 BY MR. WINE:</p> <p>5 Q. Would that item being degreased include</p> <p>6 material in process?</p> <p>7 MR. BARR: Same objections.</p> <p>8 A. It depends on the item.</p> <p>9 BY MR. WINE:</p> <p>10 Q. Would it depend on -- would it also</p> <p>11 include tooling?</p> <p>12 MR. BARR: Same objections; also</p> <p>13 vague and ambiguous.</p> <p>14 A. I think I testified the other day that</p> <p>15 based upon my personal experience, most of the tools</p> <p>16 that I saw being degreased were -- I think the</p> <p>17 terminology is -- hand dipped in small vats of -- of</p> <p>18 solvents.</p> <p>19 BY MR. WINE:</p> <p>20 Q. Including TCE?</p> <p>21 MR. BARR: Objection, beyond --</p> <p>22 that's not what the witness testified.</p> <p style="text-align: right;">Page 701</p>	<p>1 A. Not that I recall.</p> <p>2 Q. Do you recall reviewing any testimony by</p> <p>3 any Ryan witnesses regarding chrome-plating</p> <p>4 operations at the site?</p> <p>5 A. As I sit here today, not that I can</p> <p>6 recall.</p> <p>7 Q. What about witness -- expert reports</p> <p>8 referencing chrome-plating operations?</p> <p>9 A. As I sit here today, I can't specifically</p> <p>10 recall any.</p> <p>11 Q. But you are aware that the -- of anodizing</p> <p>12 operations, correct?</p> <p>13 A. That is correct.</p> <p>14 Q. And those anodizing operations used</p> <p>15 chromic acid, correct?</p> <p>16 MR. BARR: Objection, misstates the</p> <p>17 witness' prior testimony, assumes facts not in</p> <p>18 evidence.</p> <p>19 A. Based upon the specifications that I</p> <p>20 reviewed, one of the processes for anodizing was the</p> <p>21 use of chromic acid.</p> <p>22</p> <p style="text-align: right;">Page 703</p>

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Tommy Jordan

<p>1 BY MR. WINE:</p> <p>2 Q. And to -- to the extent that a</p> <p>3 specification required the use of chromic acid,</p> <p>4 could Ryan perform operations at the site without</p> <p>5 using chromic acid?</p> <p>6 MR. BARR: Objection, calls for</p> <p>7 speculation, beyond the scope of the witness'</p> <p>8 reports, expertise and testimony.</p> <p>9 A. Based upon my recollection of documents</p> <p>10 which I reviewed, anodizing was performed on some of</p> <p>11 the products produced by -- by Ryan.</p> <p>12 BY MR. WINE:</p> <p>13 Q. Okay. And so, my question is: Could Ryan</p> <p>14 have performed those operations without using</p> <p>15 chromic acid insofar as the military specification</p> <p>16 required it?</p> <p>17 MR. BARR: Objection -- same</p> <p>18 objections.</p> <p>19 A. I recall that there were two processes for</p> <p>20 anodizing, one of which was chromic acid.</p> <p>21 BY MR. WINE:</p> <p>22 Q. Could -- well, let me just make sure I</p> <p style="text-align: right;">Page 704</p>	<p>1 without employing cutting oils or lubricants at the</p> <p>2 site?</p> <p>3 MR. BARR: Same objections.</p> <p>4 A. Probably not.</p> <p>5 BY MR. WINE:</p> <p>6 Q. And do you know whether or not the</p> <p>7 applications requiring those cutting oils and</p> <p>8 lubricants were under certain conditions that</p> <p>9 required PCB additives as well?</p> <p>10 MR. BARR: Same objections; assumes</p> <p>11 facts not in evidence.</p> <p>12 A. I do not recall seeing anything that spoke</p> <p>13 specifically to the cutting oils and lubricants</p> <p>14 containing PCBs.</p> <p>15 BY MR. WINE:</p> <p>16 Q. And I believe you -- you testified that</p> <p>17 you had recollection of reviewing witness testimony,</p> <p>18 about the use of PCBs at the site.</p> <p>19 Am I remembering correctly, sir?</p> <p>20 A. The only thing that I specifically recall</p> <p>21 in prior depositions was the PCBs in transformers.</p> <p>22 Q. Okay.</p> <p style="text-align: right;">Page 706</p>
<p>1 have an answer to the last series of questions.</p> <p>2 Do you know one way or another</p> <p>3 whether Ryan could have performed its anodizing</p> <p>4 operations at the site without using chromic acid?</p> <p>5 MR. BARR: Same objections.</p> <p>6 A. If there were two acceptable processes for</p> <p>7 anodizing, I don't know specifically which ones of</p> <p>8 those two was used by Ryan; and I don't recall any</p> <p>9 of the MPDs which specifically spoke to use of</p> <p>10 chromic acid.</p> <p>11 BY MR. WINE:</p> <p>12 Q. Do you know whether chromic acid was used</p> <p>13 at the site?</p> <p>14 A. I don't know.</p> <p>15 Q. Would it require someone with expertise</p> <p>16 different than yours, sir, to determine whether or</p> <p>17 not chromic acid was needed in operations at the</p> <p>18 Ryan facility?</p> <p>19 A. In my judgment, yes.</p> <p>20 Q. And finally, with respect to cutting oils</p> <p>21 and lubricants, could Ryan have performed the work</p> <p>22 that the government was contracting with it to do</p> <p style="text-align: right;">Page 705</p>	<p>1 MR. WINE: No further questions.</p> <p>2 Thank you, Mr. Jordan.</p> <p>3 MR. BARR: That's all. Thank you,</p> <p>4 Mr. Jordan.</p> <p>5 THE VIDEOGRAPHER: This marks the end</p> <p>6 of deposition. Time off record now is 10:58.</p> <p>7 (Deposition concluded at 10:58 a.m.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: right;">Page 707</p>

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10/21/2011

TDY Holdings v. United States of America

Tommy Jordan

<p>1 CERTIFICATE OF SHORTHAND REPORTER</p> <p>2 I, Marcy Clark, Certified Shorthand</p> <p>3 Reporter, the officer before whom the foregoing</p> <p>4 deposition was taken, do hereby certify that the</p> <p>5 foregoing transcript is a true and correct record of</p> <p>6 the testimony given; that said testimony was taken</p> <p>7 by me stenographically and thereafter reduced to</p> <p>8 typewriting under my supervision; and that I am</p> <p>9 neither counsel for, related to, nor employed by any</p> <p>10 of the parties to this case and have no interest,</p> <p>11 financial or otherwise, in its outcome.</p> <p>12 Certified to by me on this _____ day</p> <p>13 of _____, 2011.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 _____</p> <p>19 MARCY CLARK, CSR, CLR</p> <p>20 Texas Certified Shorthand Reporter</p> <p>21 CSR No. 4935</p> <p>22 Certified LiveNote Reporter</p> <p>Expiration Date: 12/31/2012</p> <p style="text-align: right;">Page 708</p>	<p>1 Digital Evidence Group, L.L.C.</p> <p>2 1299 Pennsylvania Ave NW, Suite 1130E</p> <p>3 Washington, D.C. 20004</p> <p>4 (202) 232-0646</p> <p>5</p> <p>6 SIGNATURE PAGE</p> <p>7</p> <p>8 Case Name: TDY Holdings v. United States of America</p> <p>9 Witness Name: Tommy Jordan</p> <p>Deposition Date: 10/21/11</p> <p>10</p> <p>11 I do hereby acknowledge that I have read</p> <p>12 and examined the foregoing pages</p> <p>13 of the transcript of my deposition and that:</p> <p>14</p> <p>15 (Check appropriate box):</p> <p>16 () The same is a true, correct and</p> <p>17 complete transcription of the answers given by</p> <p>18 me to the questions therein recorded.</p> <p>19 () Except for the changes noted in the</p> <p>20 attached Errata Sheet, the same is a true,</p> <p>21 correct and complete transcription of the</p> <p>22 answers given by me to the questions therein</p> <p>recorded.</p> <p>_____</p> <p>DATE WITNESS SIGNATURE</p> <p style="text-align: right;">Page 710</p>
<p>1 Tommy Jordan c/o</p> <p>2 DICKSTEIN SHAPIRO, L.L.P.</p> <p>1825 Eye Street NW</p> <p>3 Washington, D.C. 20006-5403</p> <p>4</p> <p>Case: TDY Holdings v. United States of America</p> <p>5 Date of deposition: 10/21/11</p> <p>Deponent: Tommy Jordan</p> <p>6</p> <p>7 Please be advised that the transcript in the above</p> <p>8 referenced matter is now complete and ready for signature.</p> <p>9 The deponent may come to this office to sign the transcript,</p> <p>10 a copy may be purchased for the witness to review and sign,</p> <p>11 or the deponent and/or counsel may waive the option of signing.</p> <p>12 Please advise us of the option selected.</p> <p>13 Please forward the errata sheet and the original signed</p> <p>14 signature page to counsel noticing the deposition, noting the applicable</p> <p>15 time period allowed for such by the governing Rules of Procedure.</p> <p>16 If you have any questions, please do not hesitate to call our office at</p> <p>17 (202)-232-0646.</p> <p>18</p> <p>19 Sincerely,</p> <p>20</p> <p>21 Digital Evidence Group</p> <p>Copyright 2011 Digital Evidence Group</p> <p>22 Copying is forbidden, including electronically, absent express written consent.</p> <p style="text-align: right;">Page 709</p>	<p>1 Digital Evidence Group, L.L.C.</p> <p>2 1299 Pennsylvania Ave NW, Suite 1130E</p> <p>3 Washington, D.C. 20004</p> <p>4 (202) 232-0646</p> <p>5</p> <p>6 E R R A T A S H E E T</p> <p>7</p> <p>8 Case Name: TDY Holdings v. United States of America</p> <p>9 Witness Name: Tommy Jordan</p> <p>10 Deposition Date: 10/21/11</p> <p>11 Page No. Line No. Change</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 _____</p> <p>22 Signature Date</p> <p style="text-align: right;">Page 711</p>

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